

1 Georgia law of 2005, which I think is very close to
2 the present state of the Texas legislation, triggered
3 the opposition from Secretary Baker and President
4 Carter, because it failed in these important facets.

5 Also, as you talked about earlier, the
6 phased-in implementation to allow voters to cast
7 provisional ballots before they lost their vote. And
8 the commission was very interested in replacing the
9 patchwork national quilt of ID laws with a national
10 standard. What the commission was very interested in
11 was one national standard.

12 And so what you have now is I think in
13 some ways exactly what the commission feared, which
14 was a piecemeal approach toward implementing ID laws
15 and which will have very dramatic differences between
16 states such as Georgia and Indiana and other states.

17 SEN. VAN de PUTTE: Thank you.

18 Dr. Moore, I know that the commission
19 made these recommendations. But given your work, what
20 evidence is there that those who lack photo ID are
21 more likely to be women?

22 DR. MOORE: Well, I think some of the
23 best evidence is the survey that the commission
24 sponsored in 2007 which found that nearly all the
25 people who responded to their survey -- and they

1 surveyed 2,000 registered voters in three states --
2 almost all of their respondents who did not have ID
3 were, in fact, women.

4 This is doubly troubling when you're
5 talking about ID, because women run into name
6 problems. Women's names change. They marry; they
7 divorce. And if your ID doesn't match the name on
8 your registration, then you run into more confusion
9 from that, so that's another reason to take that
10 problem even more seriously.

11 SEN. VAN de PUTTE: And, Dr. Moore, I
12 know that we probably don't have the data in Texas,
13 but if you were to use that American University survey
14 approach that you described and apply it to Texas, do
15 you have some sort of idea, given that that is a good
16 survey instrument, how many voters in Texas would
17 totally lack a photo ID?

18 DR. MOORE: AS a minimum, I think
19 somewhere around 162,900, which is applying that same
20 ratio. That ratio is probably low for Texas, because
21 that survey was based in states like Indiana which had
22 a very high ID ownership as a result, in part, because
23 of the voter ID law. So I would expect that Texas'
24 actual number would be somewhat higher than that.

25 SEN. VAN de PUTTE: Well, if it was even

1 8 percent and we have about 13.7, 13.6 million voters,
2 if it was even a more conservative estimate that only
3 8 percent, would that be a substantial number that
4 would have difficulty in meeting any pre-clearance
5 from the Department of Justice?

6 DR. MOORE: Yes. I think that's
7 actually a higher estimate, the 8 percent. I think
8 that if you -- if Texas were to investigate this and
9 come up with that figure and the demographics of the
10 group without ID, you would have a very, very
11 difficult time getting it through pre-clearance or
12 through federal courts if nearly one in 10 voters
13 lacked ID.

14 SEN. VAN de PUTTE: And as we know that
15 this is a foregone conclusion, at least here in the
16 Texas Senate, in the event that our state would seek
17 approval from the Department of Justice, who bears the
18 burden of proving up the effects of the photo
19 identification?

20 DR. MOORE: Well, unlike in the federal
21 court cases under Section 5 pre-clearance review, the
22 State of Texas would have that burden.

23 SEN. VAN de PUTTE: So those of us or
24 those groups who would claim that it would be
25 discriminatory do not bear the burden, it's the state

1 that would have to prove that the voter ID requirement
2 does not have a discriminatory impact. Is that
3 correct?

4 DR. MOORE: That's correct.

5 SEN. VAN de PUTTE: So the Department of
6 Justice -- help me understand -- the Department of
7 Justice doesn't have to produce affirmative evidence
8 of how the ID laws will discriminate against minority
9 voters to deny pre-clearance, does it?

10 DR. MOORE: No.

11 SEN. VAN de PUTTE: So the Department of
12 Justice can block a photo ID bill from taking effect
13 if they find that the state has failed to show that
14 the law is free of a discriminatory purpose or effect.
15 Correct?

16 DR. MOORE: That's correct.

17 SEN. VAN de PUTTE: So what kind of data
18 would the state need to prove it up?

19 DR. MOORE: Well, I don't think that the
20 threshold will be a definitive answer. I mean, I
21 don't think there is a definitive answer. Even if you
22 funded a well-funded survey, you would still have
23 error rates around your survey responses and so on.

24 But I think what the Department of
25 Justice will look for, which is what we looked for

1 when I was there, would be a good-faith effort to
2 identify that population and then have built the
3 legislation to address any problems you found with it.
4 But I think the first step is to try to identify that
5 pool of people who don't have ID and find out what is
6 their makeup in regards to the protected groups under
7 Section 5.

8 SEN. VAN de PUTTE: So if the data is
9 not known by the state or cannot be proved or produced
10 by the state, they cannot show that the voter ID bill
11 meets the requirements of the Voting Rights Act
12 requirement?

13 DR. MOORE: That's right.

14 SEN. VAN de PUTTE: And so should we be
15 concerned, as a state, about eligible but
16 non-registered voters in this?

17 DR. MOORE: Eligible but non-registered
18 voters would be protected by this Section 5 of the
19 Voting Rights Act.

20 SEN. VAN de PUTTE: So, in other words,
21 this would be folks that would be eligible, but for
22 our efforts would really not end up being able to cast
23 a ballot. Is that correct?

24 DR. MOORE: That's right. They will
25 enter into the analysis.

1 SEN. VAN de PUTTE: You mentioned just
2 briefly at the end that other states that have
3 implemented this, Indiana, of course, didn't have to
4 go through the process that we do. But, you know,
5 Georgia had somewhat. I don't know if they have the
6 language diversity that we have, in particular these
7 language-based groups.

8 But because we have that in our state
9 and we are -- the new data shows that over half of our
10 first graders are actually Hispanic, and because of
11 our high number of naturalized citizens that are in
12 Texas, what would it cost a state like Texas, given
13 what's occurred in other states, to develop and
14 implement the public education component that again
15 the Department of Justice would say would prove up the
16 state's ability to ensure that there wouldn't be
17 discrimination? I mean, what kind of costs are we
18 talking about?

19 DR. MOORE: Well, if you look at
20 Georgia's example -- and again, Georgia is a Section 5
21 state -- and remember that the 2005 law that Georgia
22 passed, which is similar I think in many ways to this
23 law and that was pre-cleared by the Justice
24 Department, was blocked by federal and state courts
25 and abandoned by Georgia itself.

1 In fact, the Bush Administration is
2 pretty much the only people left to defend the 2005
3 Georgia law. They went back to the courts with a
4 revamped 2006 law. This law had provision for free
5 ID. This law opened offices across the state in every
6 county. And this law included a public education
7 campaign of half a million dollars a year targeted
8 just to informing voters of the effects of voter
9 education.

10 Now, as you said, Texas being a much
11 larger state and with the language diversity that you
12 have, with the multiple media markets you have, you're
13 talking about some multiplier of that half million, I
14 think, if you're going to make an effective effort to
15 inform people of the new voter ID requirements.

16 SEN. VAN de PUTTE: And let me clarify
17 this, because what you're telling us is that the
18 Department of Justice said that Georgia had to go back
19 and revamp because they didn't have these efforts.
20 And, Dr. Moore, I don't know if you've seen, but our
21 fiscal note, which is the estimate of our Legislative
22 Budget Board, to implement the provisions of this bill
23 is zero -- zero, nada, nothing, zilch, nada.

24 And so if a state like Georgia, which is
25 much smaller, was required, because of pre-clearance

1 and Voting Rights Act, to put an effort, you would
2 assume that it would take Texas a little bit more than
3 zero dollars to do the outreach, to inform the voters,
4 to do the training of our thousands and thousands of
5 election judges at the polling precincts. Is that
6 correct?

7 DR. MOORE: Yes. I think that unless
8 that is part of the legislation and that funding is
9 provided for before it goes to pre-clearance, the
10 Justice Department will be very skeptical that that
11 would ever be really implemented effectively.

12 SEN. VAN de PUTTE: So it's not just the
13 costs that would be incurred in the change in the
14 laws, the training, the outreach, but -- for example,
15 in the State of Texas, in our major metropolitan
16 areas, the locations at where citizens can go get a
17 driver's license are all outside the loops. In Bexar
18 County, there is one inside Loop 410. I think in
19 Houston, there may be -- I don't know if there are
20 any -- but these are where the majority of African-
21 Americans, Hispanics live; yet, there is no office to
22 go get the driver's license or the voter ID. Would
23 this be a significant problem in the viewpoint of the
24 Department of Justice?

25 DR. MOORE: I think if the minority

1 populations were, you know, very well integrated and
2 there was no correlation between the absence of an
3 office in minority communities, then, no, that would
4 not be a problem. But if Texas has a situation in
5 which you have large minority communities that don't
6 have equal access to DPS offices where they can go and
7 get the ID, then, yes, I would think that is really
8 going to be a red flag for the Department of Justice.

9 SEN. VAN de PUTTE: Now, our bill, with
10 the military, the institutional type IDs, the
11 certificates versus papers of naturalized citizens,
12 it's a little more complex than what we've seen in
13 other states. Is that correct?

14 DR. MOORE: Yes, I think that's true.

15 SEN. VAN de PUTTE: And so since it's
16 more complex, would you think that that would probably
17 require a little bit more training of those election
18 judges in the polling precincts?

19 DR. MOORE: I certainly would think so.
20 I mean, I was in Indiana in 2006, in Indianapolis, and
21 observed the election after their ID law. And even in
22 Indiana where they did a pretty good job of
23 instructing poll workers, there was still ample
24 confusion. And what happens is, the first high
25 turnout you'll have, you'll have much longer lines and

1 room for conflict if care is not taken to train poll
2 workers to be able to fairly implement this new law.

3 SEN. VAN de PUTTE: And my other
4 question is, again from the other surveys, if
5 8 percent of the folks lack a photo identification --
6 and we have about 13 -- what? -- million plus voters,
7 and not the conservative estimate, that would be a
8 million Texans who are currently registered to vote
9 who don't have a photo ID.

10 DR. MOORE: Yes. And I think what I
11 would say is that the important thing is not for me to
12 have an answer on the estimates of people who don't
13 have an ID but for Texas to have a good estimate.
14 That's what the Department of Justice is going to be
15 looking for. And that's going to be, you know, a
16 significant piece of evidence when this comes to
17 pre-clearance.

18 SEN. VAN de PUTTE: Well, what this
19 fiscal note tells me is that my state is unwilling to
20 put one penny into any efforts to train, to do
21 information, to do education. And certainly if we're
22 providing maybe the one million who don't have them
23 now, with free IDs, what kind of costs -- I mean,
24 given the costs that were in Georgia for this or in
25 other states, what sort of costs are we looking at?

1 Yet, I guess we're coming up with imaginary numbers
2 here. Who is absorbing this cost? How much do you
3 think it would cost in Texas?

4 DR. MOORE: Well, it depends on how you
5 provide the free IDs. The legislation, as I read it
6 now, does not actually provide free IDs. It provides
7 only free IDs to those who will only use the ID in
8 order to vote, which is very different from Indiana
9 and the 2006 Georgia law.

10 Indiana, when it provided free ID cards
11 when it was considering its legislation, it estimated
12 that the state would lose more than \$700,000 annually
13 in lost revenue and additional expenses from providing
14 free ID. Again, you can do the math in Texas, and I
15 expect it would be considerably higher. But I would
16 expect that, you know, free ID -- if the Texas
17 legislation, as passed and sent to the Department of
18 Justice, does not have a strong free ID provision,
19 then it would be markedly different from even the
20 Georgia and Indiana laws.

21 SEN. VAN de PUTTE: And in your
22 estimate, Dr. Moore, when you've looked at the
23 research and the statistics, a lot of our statistics,
24 we had a lot of new voters in this last election year.
25 But that doesn't account for the citizens of the third

1 age, our senior citizens that are already registered
2 but don't have the type of identification required in
3 this bill. Is that correct?

4 DR. MOORE: I think there is a general
5 agreement that elderly people are more susceptible to
6 not having proof of ID and proof of citizenship. But,
7 you know, I think the numbers again are difficult to
8 come by good, solid information on that. But yes.

9 SEN. VAN de PUTTE: Thank you,
10 Dr. Moore. I appreciate your answers.

11 SEN. DUNCAN: Okay. Members, I see a
12 lot of lights still on this witness. We've been going
13 now for two hours and 15 minutes. We need to take a
14 short break for our court reporter.

15 I'll remind you that we have witnesses
16 in the gallery that are continuing to -- that will be
17 public testimony -- that are continuing to wait to be
18 heard.

19 The Senate Committee of the Whole will
20 stand at ease until 9:25.

21 (Recess: 9:16 p.m. to 9:29 p.m.)

22 SEN. DUNCAN: The Senate Committee of
23 the Whole will come back to order.

24 Senator Williams, you have the floor.

25 Oh, before you do that, before I forget

1 to do this, if you wouldn't mind, let me retract that.

2 SEN. WILLIAMS: Sure.

3 SEN. DUNCAN: Dr. Moore has submitted
4 his written testimony for the record as Exhibit 21,
5 and that will be received in the record.

6 (Exhibit No. 21 marked and admitted)

7 SEN. DUNCAN: Sen. Williams.

8 SEN. WILLIAMS: Thank you.

9 Dr. Moore, I would like to direct your
10 attention and the committee's attention to Page 6 of
11 your testimony where you draw your conclusions. And
12 there's a couple of things I wanted to explore with
13 you there. Where you say, "In fact, there are many
14 ways to reasonably ensure the identity of voters
15 without disenfranchising those without ID an or
16 placing unnecessary barriers to the voting booth. The
17 use of affidavits, in particular, creates a paper
18 trail that allows for the enforcement and analysis. A
19 state could run its elections under this sort of law
20 for an election or two, and then survey those voters
21 who vote via the affidavit. This is the pool of
22 voters who would be affected by an absolute photo ID
23 requirement. If the survey finds evidence of fraud,
24 if the affidavit voters were not citizens or voted on
25 bad voter registrations, the law can be tightened."

1 So I'm trying to understand what you're
2 suggesting there. Are you suggesting that if we
3 suspect that there is some voter fraud going on, that
4 it's okay to have a little bit of it, until we
5 determine whether it's really there or not?

6 DR. MOORE: Yes, in a way. I mean, I
7 think what I'm saying is that, given the little that
8 we know about voter fraud, voter impersonation fraud,
9 and the risk of substantial disenfranchisement, that
10 it's worth continuing what has been I think a fairly
11 successful system of elections, in order to get us the
12 data that would allow us to make better public policy
13 choices.

14 SEN. WILLIAMS: Okay. Well, I think
15 that's -- you know, it's striking to me, in light of
16 some of the conclusions. I mean, the letter from the
17 co-chairs of the Baker-Carter Commission said that,
18 "Elections are the heart of democracy. They are the
19 instrument for the people to choose leaders and hold
20 them accountable. At the same time, elections are a
21 core public function upon which all other government
22 responsibilities depend. If elections are defective,
23 the entire democratic system is at risk."

24 And then in the U.S. Supreme Court
25 decision on the Indiana case, in the majority opinion,

1 they specifically talk about voter fraud. And they go
2 on to say that, "It remains true [however] that
3 flagrant examples Of such fraud in [other] parts of
4 the country have been documented throughout the
5 Nation's history by respected historians and
6 journalists, that occasional examples have surfaced in
7 recent years, and that Indiana's own experience with
8 fraudulent voting in the 2003 Democratic primary . . .
9 demonstrate that not only [is] the risk of voter fraud
10 [is] real but that it could affect the outcome of a
11 close election.

12 "There is no question about the
13 legitimacy or importance Of the state's interest in
14 counting only the votes of eligible Voters. Moreover,
15 the interest in orderly administration and accurate
16 recordkeeping [is] a sufficient justification for
17 carefully identifying all voters participating in the
18 election process. While the most effective method of
19 preventing election fraud may well be debatable, the
20 propriety of doing so is perfectly clear."

21 And it just seems incredible to me that
22 you would propose that we allow a little bit of fraud
23 until we figure out another way. It just seems very
24 inconsistent with both the Baker-Carter Commission and
25 the Supreme Court decision.

1 DR. MOORE: I'm sorry. Was there a --

2 SEN. WILLIAMS: I mean, do you care to
3 comment on that?

4 DR. MOORE: I don't think we know enough
5 about voter impersonation fraud, notwithstanding the
6 Supreme Court's decision or Carter-Baker, to
7 enforce -- to effectively draw up a good voter ID
8 regime. There is more than one way to make a bad
9 election system. One bad election system is one
10 riddled with fraud. Another bad election system is
11 one we've had in the United States for many decades
12 prior to the 1960s, which was one that was riddled
13 with disenfranchisement.

14 So I think it's a balancing act. And I
15 think as policymakers, you would be justified in
16 instituting a law that would allow you to gather
17 better data. For instance, the Carter-Baker
18 Commission themselves wanted to phase in their voter
19 ID requirement and allow people to vote provisionally
20 and have that ballot counted. So I think the
21 Carter-Baker Commission is doing the same thing you're
22 shocked that I would do, but you seem to like their
23 recommendation. They would seem to be willing to
24 tolerate that same risk for a couple of elections in
25 order to move you toward both a fair and safe election

1 system.

2 SEN. WILLIAMS: You know, I think it is
3 a balancing act. And although there is a lot you've
4 said tonight that I don't agree with, I do agree with
5 that one point. And, you know, they go on to say in
6 this same Supreme Court opinion that I quoted from
7 earlier that the severity of the burden, of course, is
8 mitigated by the fact that if eligible voters without
9 photo identification may cast provisional ballots that
10 will be ultimately counted, it's unlikely that such a
11 requirement would pose a constitutional problem unless
12 it's wholly unjustifiable. And even assuming that the
13 burden may not be justified as to a few voters, the
14 conclusion is by no means sufficient to establish the
15 Petitioner's right to relief they seek in this
16 litigation.

17 And so it seems to me that the Court
18 directly addressed that balancing act that you're
19 talking about between the risk of disenfranchising
20 people, which none of us want to do on this floor, and
21 the risk of having an election stolen by false voting,
22 voter impersonation or other things that may go on.

23 And I don't know. Maybe you don't
24 realize that this bill that we're considering
25 contains -- you know, we already have in state law

1 provisional voting requirements that are consistent
2 with the HAVA requirements. So there is no instance
3 where someone would not be able to go in and cast a
4 ballot under this bill. Are you aware of that?

5 DR. MOORE: But if the person didn't
6 have ID, what would happen to their provisional ballot
7 after they cast it?

8 SEN. WILLIAMS: Well, and I think we'll
9 have the Secretary of State testify about that. It's
10 a process where there is a determination made by the
11 election judge whether that person was who they said
12 they were or not. And there is actually a process
13 that all of us voted for. All 31 of us voted for our
14 provisional voting process that we have here in Texas,
15 and it's been cleared through the Department of
16 Justice. So that provisional voting that we have in
17 Texas is cleared by DOJ. It meets the Section 5
18 requirements, and everybody in this chamber voted for
19 it.

20 DR. MOORE: Well, I mean, but that's
21 under a different ID regime. Is that right? I mean,
22 what was pre-cleared was --

23 SEN. WILLIAMS: Under our current ID
24 regime. But the provisional voting -- the law on
25 provisional voting doesn't change under this bill. So

1 whoever goes to vote will still be able to cast a
2 provisional ballot and then an election judge, the
3 appropriate official -- I need to let the Secretary of
4 State speak to it, because I don't want to -- I might
5 not have the specific terms correct. But there is a
6 process that has been cleared that we use to determine
7 whether that's an eligible vote. That's under current
8 law. That process isn't touched top or bottom by
9 this. At worst, at the worst, you might have a few
10 more provisional ballots.

11 DR. MOORE: I'm not understanding how
12 you change the IDs that are required without changing
13 the provisional ballot system.

14 SEN. WILLIAMS: Well, I would suggest
15 you read our bill and then you would understand it.

16 DR. MOORE: Well, I did read the bill.
17 Maybe I need to talk to the Secretary of State's
18 office to get a better understanding of that.

19 SEN. WILLIAMS: Right. Okay. And then
20 finally, a couple of other things that I wanted to
21 just point out. You commented with Sen. Van de Putte
22 extensively about voter education and how important
23 that was. And, you know, the way this fiscal note
24 process works here in our state, there is a careful
25 look at an independent non- -- independent

1 non-partisan group, the Legislative Budget Board, they
2 work for every one of us here, and they make a
3 determination.

4 And when I went back and looked at this
5 bill, you know, the reason there's no cost here is,
6 this bill doesn't address voter education, and so
7 there would be no additional expense. However, what
8 you may not know is that the Secretary of State
9 already has a line item in their budget for voter
10 education. I'm working to get that number for us now.
11 We don't know -- I can't tell you off the top of my
12 head what it is. But it's not as if the state is not
13 already spending money on voter education. Were you
14 aware of that?

15 DR. MOORE: I would have assumed that
16 you were already spending money on voter education.

17 SEN. WILLIAMS: Okay. And so what I
18 think we're going to hear in testimony from the
19 Secretary of State is that they can absorb the cost of
20 this in their existing budget.

21 Thank you.

22 SEN. DUNCAN: The Chair recognizes
23 Sen. Gallegos.

24 SEN. GALLEGOS: Thank you, Mr. Chairman.

25 Dr. Moore, I have a couple of questions,

1 kind of like in the line of questions that Sen. Van de
2 Putte gave you. I do want to, at the proper time,
3 Mr. Chairman, submit the map I'm fixing to talk about
4 as an example. And I've got a copy for all the
5 members.

6 SEN. DUNCAN: Why don't you go ahead and
7 send it up now and let's mark it so we'll have a
8 proper reference in the record.

9 SEN. GALLEGOS: Give one to Dr. Moore.

10 SEN. DUNCAN: Exhibit 22 is a map
11 submitted by Sen. Gallegos. It will be submitted into
12 the record.

13 (Exhibit No. 22 marked and admitted)

14 SEN. DUNCAN: Senator, you can ask your
15 questions.

16 SEN. GALLEGOS: Okay. Thank you,
17 Mr. Chairman.

18 Dr. Moore, the data that I'm passing
19 out -- and I will relate to two other maps, because
20 the one from Houston will suffice. That's my
21 hometown. And the data is from the Texas Department
22 of Public Safety, shows that in my home city of
23 Houston, it is very -- under this bill, Dr. Moore,
24 that if you look -- members, if you look at the map,
25 there is no DPS center inside the 610 loop, and the

1 same is for Fort Worth.

2 Sen. Davis, there is none inside the 610
3 loop in Fort Worth.

4 And, Sen. West, there's only one in the
5 City of Dallas, a DPS center.

6 What my question is to you, Dr. Moore,
7 if we pass this legislation that mandates that every
8 Texan that wants to vote get a photo ID, that if you
9 look at the map, especially the City of Houston -- or
10 the Houston map -- that most of these folks that
11 probably are going to have to have voter ID are
12 minorities, live inside the 610 loop, socioeconomic
13 welfare is low. They'll probably have no methods of
14 transportation and depend on public transportation to
15 move around.

16 If we pass the bill, as what you see on
17 that map that I just gave you, Dr. Moore, and the
18 other cities that I described, which inside those 610
19 loops, the majority of the population is minority in
20 those cities. In looking at preliminary numbers that
21 I've already gotten on total population, in the last
22 10 years, in Houston, Texas, from 2000 to upcoming
23 2010 when the census is taken, just in Houston alone
24 the preliminary numbers are 1.1 million in the last 10
25 years, the majority of those Latino, in Houston -- in

1 Houston.

2 So with that in mind, Dr. Moore, what I
3 would like to ask you is, do you believe that if
4 there's no DPS centers, were this bill by Sen. Fraser,
5 if there's no DPS centers in that 610 loop, that that
6 will become a hardship -- if the state mandates for a
7 photo ID and I, living inside the loop, without a car,
8 public transportation only, it's going to create a
9 hardship for me to get to that DPS center, especially
10 if there's none inside the 610 loop in Houston, in
11 Fort Worth, only one in Dallas, Texas. And that's
12 going to create a hardship for me as living inside the
13 city, low income, try to catch public transportation
14 and at least try to get to one of these that are
15 outside the loop. Let me ask you, in your
16 professional opinion, Dr. Moore, do you consider that
17 a hardship for those people living in there if we pass
18 this piece of legislation, that creates a hardship on
19 these people?

20 DR. MOORE: I'll answer in this way:
21 The Justice Department has a very sophisticated
22 geographic information system with all the census data
23 loaded into it, because of the redistricting work.
24 And it's a very simple matter to sit down and, within
25 15 minutes, create buffers around each of these points

1 and calculate the minority population and how much of
2 the minority population lives within one mile or
3 10 miles or whatever.

4 Those numbers were a serious detriment
5 to Georgia in 2005, where Georgia didn't have
6 Department of Motor Vehicle offices in many counties
7 or in the City of Atlanta. It was a problem for the
8 federal judge who struck down Georgia's law, and I
9 think it's something that's going to take close
10 analysis to determine the differential impact that is
11 certainly going to be a red flag and something the
12 Department of Justice is going to look at very
13 closely.

14 SEN. GALLEGOS: Okay. So the answer is
15 yes on -- let's say a potential hardship for those
16 folks in there if we mandate every Texan to get a
17 photo ID that wants to vote?

18 DR. MOORE: Lack of access to the places
19 to go to get that ID will be seen as a hardship on
20 minority voters, who tend to be poor, tend to have
21 less access to transportation.

22 SEN. GALLEGOS: Thank you, Dr. Moore.

23 SEN. DUNCAN: Sen. Shapleigh.

24 SEN. SHAPLEIGH: Thank you, Mr. Chair.

25 Toby, in your testimony I think you're

1 the only witness who to date has come forward to give
2 us a number. And what you're saying is that
3 approximately 162,901 registered voters in the 2008
4 election in Texas would have lacked a
5 government-issued photo. And I think your testimony
6 is, this is the minimum number and almost surely
7 under-estimates that population. Give us the range.
8 What would be the outside number?

9 DR. MOORE: Well, the Carter-Baker study
10 survey looked at Indiana, Mississippi and Maryland and
11 found that the number of people without ID varied from
12 I think 0.2 percent, or very little in Indiana, up to
13 close to 4 percent, I believe, in Maryland. I will
14 have to go back and look. So there was a range there
15 of states. The average of all the people they
16 surveyed, all 2,000 voters, was 1.2 percent, and
17 that's percentage I apply.

18 However, because that number includes
19 Indiana, which has a very high rate of ID ownership,
20 there is reason to believe that the number would be
21 higher than the 1.2 percent in Texas. But I would
22 only have confidence in saying that as a minimum, that
23 162,901, based on the AU survey.

24 SEN. SHAPLEIGH: But you can't offer an
25 opinion as to a number? When you look at the

1 demographic breakdown of Texas -- and here you're
2 saying African-Americans are four times more likely
3 than whites to lack a photo ID -- 88 percent of those
4 without a photo ID had household incomes below \$25,000
5 a year. In my own community, I think something like
6 73 percent of the population makes less than \$35,000 a
7 year by household.

8 So is there a formula, is there a way
9 that you can look at the demographics of the 2003
10 census, extrapolate the 2008 and say this is your high
11 number with respect to the number of folks that are
12 going to lack a photo ID in Texas?

13 DR. MOORE: Well, it always scares me a
14 little bit when I hear people use the word
15 "extrapolate." I think I'll stick with my
16 conservative low threshold, knowing that it's probably
17 higher, could be considerably higher. But until
18 somebody does the analysis, does the survey work,
19 there is no way to know.

20 SEN. SHAPLEIGH: Okay. Now, you are the
21 only witness that was part of the Carter-Baker
22 Commission. From your testimony, I think you were the
23 Project Director. Is that correct?

24 DR. MOORE: I was Project Manager after
25 the release of the study. So I managed the follow-up

1 work.

2 SEN. SHAPLEIGH: And you've also served
3 for six years as the geographer of the Voting Section
4 of the Civil Rights Division? In connection with that
5 service, in connection with your professional
6 expertise, do you have a number with respect to
7 Hispanics? I notice that you've opined here as to
8 African-Americans, how many lack a photo ID. We've
9 talked about women; we've talked about folks making
10 less than \$25,000 a year. What is that number for
11 Hispanics?

12 DR. MOORE: Hispanics are a very
13 difficult group to survey, especially impoverished
14 Hispanics who may not have landlines. They're hard to
15 reach. There are language difficulties. I don't know
16 of any kind of full-fledged scientifically credible
17 survey that would allow you to get at that number,
18 because from what we know of ID ownership and how it
19 correlates with low incomes, we would expect that
20 number to be considerably higher for Hispanics than
21 for other groups.

22 On the other hand, Hispanic citizens may
23 have higher levels of documentation, because they need
24 to prove their citizenship where they have gone
25 through the naturalization. There are a lot of

1 variables in that. But we just don't know for
2 Hispanics how many people don't have an ID.

3 SEN. SHAPLEIGH: Are you familiar with
4 the Texas colonias?

5 DR. MOORE: Very little.

6 SEN. GALLEGOS: Thank you.

7 SEN. DUNCAN: Thank you, Dr. Moore.

8 There are no other witnesses or members
9 queued up, so you are excused.

10 The next witness is Dr. Frank
11 Strickland.

12 Dr. Strickland, you will approach, state
13 your name and who you represent. Turn your testimony
14 over to the -- written testimony, if any.

15 Do we have that?

16 I'll go ahead and introduce that as
17 Exhibit 23, would be the testimony of Frank B.
18 Strickland.

19 (Exhibit No. 23 marked and admitted)

20 SEN. DUNCAN: State your name, please,
21 and who you represent. You have 10 minutes.

22 **TESTIMONY BY FRANK B. STRICKLAND**

23 MR. STRICKLAND: Thank you,
24 Mr. Chairman. And, by the way, it's not
25 Dr. Strickland.

1 Sen. Duncan and members of the Senate,
2 my name is Frank Strickland. I'm a partner in the law
3 firm of Strickland Brockington Lewis in Atlanta,
4 Georgia, a firm which, together with its predecessors,
5 dates back to 1971. My experience with elections
6 comes primarily from two sources: Serving as a member
7 of the election board for the largest county in
8 Georgia and litigating various election and other
9 political cases over a period of many years.

10 Although I am not here in an official
11 capacity, I'm one of five members of the Fulton County
12 Board of Registration and Elections which is a
13 bipartisan board appointed by the Board of
14 Commissioners of Fulton County, which has general
15 supervision over all voter registration and election
16 processes in Georgia's largest county. I previously
17 served on the Election Board from 1971 to 1977.
18 Substantially all of the City of Atlanta is located in
19 Fulton County.

20 The Election Board is independent in
21 that it does not report to the Board of Commissioners,
22 and its decisions on registration and election matters
23 in Fulton County, including the appointment of the
24 department director, are final. Fulton County is
25 Georgia's largest county, with a population of

1 approximately 850,000. And there are approximately
2 552,000 registered voters in the county.

3 In 2005 Georgia first adopted a law
4 requiring a form of photo identification when voting.
5 A substantial number of persons over age 18 already
6 had a Georgia driver's license, which is one of the
7 acceptable forms of identification. The 2005 statute
8 provided for issuance of a state voter ID for a
9 nominal fee to persons who did not have a driver's
10 license or other acceptable form of photo ID, such as
11 a government employment ID card, voter ID card, United
12 States military ID card, tribal ID card or a United
13 States passport.

14 As a result of federal court litigation
15 before United States District Judge Harold Murphy in
16 Rome, Georgia, the law was changed in 2006 to provide
17 for the issuance of a free photo ID card at any
18 registrar's office in one of Georgia's 159 counties.

19 Notwithstanding the availability of a
20 free photo ID to anyone who did not have another
21 acceptable form of identification, the 2006 statute
22 was also litigated before Judge Murphy in a case
23 entitled Common Cause vs. Billups which is found at
24 504 F.Supp. 1333. Judge Murphy was a Carter appointee
25 to the federal bench, and he recognized the state's

1 interest in passing a photo identification law to
2 prevent fraud when he said -- and I quote --
3 "Additionally, Plaintiffs have failed to demonstrate
4 that the Photo ID requirement is not reasonably
5 related to the state's interest in preventing fraud in
6 voting."

7 Other plaintiffs filed suit in state
8 courts to challenge the photo ID statute under state
9 law. These efforts were also unsuccessful after
10 appeal to the Supreme Court of Georgia.

11 In addition to arguing that in-person
12 voter fraud does not occur and remedies like voter
13 identification laws are unnecessary, opponents of
14 photo identification requirements have long argued --
15 quite vocally and emphatically -- that these laws
16 would lead to disenfranchisement of, in Georgia's
17 case, hundreds of thousands of voters. But when the
18 State of Georgia finally had its day in court, it
19 became clear that emotional and hyperbolic arguments
20 used to argue against the state's photo identification
21 law were simply empty rhetoric.

22 Judge Murphy also addressed this
23 argument in his decision for the state -- and I
24 quote -- "As the Rekita court noted, voters who lack
25 Photo ID undoubtedly exist somewhere, but the fact

1 that Plaintiffs, in spite of their efforts, have
2 failed to uncover anyone 'who can attest to the fact
3 that he/she will be prevented from voting' provides
4 significant support for a conclusion that the Photo ID
5 requirement does not unduly burden the right to vote."

6 Judge Murphy further stated, quote,
7 "Plaintiffs have failed to produce any evidence of any
8 individual ... who would undergo any appreciable
9 hardship to obtain photo identification in order to be
10 qualified to vote."

11 The plaintiffs' inability to produce a
12 single voter who would be adversely impacted by the
13 law was important to Judge Murphy's determination that
14 there was no significant burden posed by the photo ID
15 law and should also be a very important consideration
16 for the Texas Senate.

17 Of the two individual plaintiffs named
18 in the Common Cause case, one individual testified
19 that she didn't mind getting a photo identification
20 and she didn't think it would be hard to get one. The
21 other Plaintiff said that he thought he could get a
22 photo ID and it would probably help him a lot.
23 Interestingly, the same lawyers who argued that
24 Plaintiff simply could not find a way to travel seven
25 miles to his registrar's office to get a photo ID also

1 drove that Plaintiff nearly 200 miles to testify at
2 trial, traveling past many locations where he could
3 have obtained a free photo ID on the way to the trial.

4 Likewise, the other witnesses relied
5 upon by the lawyers for the Plaintiff to establish
6 that obtaining a photo ID was too burdensome
7 ultimately agreed that, in fact, they were perfectly
8 capable of obtaining the ID. One woman who signed an
9 affidavit prepared by the Plaintiff's counsel
10 asserting that it was too far to go to the county
11 courthouse to get a photo ID from the registrar,
12 freely admitted on her deposition that she regularly
13 traveled to the courthouse and could pick up an ID the
14 next time she was there.

15 Another witness who also gave an
16 affidavit that he would have a hard time obtaining a
17 photo ID testified differently on deposition. When
18 asked if he thought he could get a ride to the
19 registrar's office to get a photo ID, he replied that
20 he didn't need a ride and he could get one any time,
21 because the registrar's office was within walking
22 distance of his home.

23 Judge Murphy's decision in the Common
24 Cause case, which is found at 554 F.3d 1340 -- I beg
25 your pardon. This is the Court of Appeals decision --

1 it was upheld on January 14, 2009, in a unanimous
2 opinion of a three-judge panel of the United States
3 Court of Appeals for the 11th circuit. The Court
4 stated -- and I quote -- "We conclude, based on the
5 [evidence] in Crawford v. Marion County Election
6 Board . . . which upheld a similar law in Indiana,
7 that the burden imposed by the requirement of photo
8 identification is outweighed by the interest of
9 Georgia in safeguarding their right to vote."

10 The Plaintiffs have filed a petition for
11 certiorari. But because the Crawford case is really
12 on all fours with Georgia's case -- except Georgia's
13 law was deemed less strict by Justice Kennedy -- a
14 grant of that petition application for cert is
15 unlikely.

16 After Judge Murphy's September 2007
17 decision upholding the photo ID law, Georgia held
18 numerous elections during 2007 and 2008. In
19 November 2007, more than 100 Georgia counties and
20 municipalities held elections with the photo
21 identification law in place. Every one of these
22 elections occurred without incident or legal challenge
23 related to the photo ID requirement. In July 2008,
24 partisan primaries were held with a large turnout; and
25 again, no problems related to photo ID.

1 Most importantly, in the 2008 General
2 Election, with the highest turnout ever seen in
3 Georgia -- more than 3.9 million voters -- the photo
4 ID law posed no problem. That fact is particularly
5 important because of the 3.9 million votes cast, 92
6 percent were cast in person, meaning that the voter
7 had to show a proper form of photo ID. Again, no
8 problems. Although the turnout was much lighter for
9 the December 2nd runoff, the fact remained constant
10 that the photo ID requirement did not result in any
11 disenfranchisement statewide.

12 From the perspective of an elections
13 administration official in Fulton County, I can also
14 say without hesitation that countywide, the photo ID
15 requirement did not result in the mass
16 disenfranchisement its opponent predicted. The
17 requirement did not result in any disenfranchisement
18 at all.

19 Focusing on the general election in
20 November 2008, the voter turnout was 405,000 out of
21 552,000 registered voters, which is a turnout of
22 approximately 73 percent, a record for Fulton County,
23 both in terms of the number of registered voters and
24 voter turnout. Only 93 voters did not have an
25 acceptable form of photo ID. Each voter was given a

1 provisional ballot and, in accordance with the
2 statute, was instructed to present a valid photo ID
3 within 48 hours. While only one did so, there is no
4 way to know why the others did not.

5 SEN. DUNCAN: Mr. Strickland, your time
6 has expired.

7 MR. STRICKLAND: All right, sir.

8 SEN. DUNCAN: We have Sen. Watson.

9 **QUESTION FROM SENATE FLOOR**

10 SEN. WATSON: Welcome to Texas.

11 MR. STRICKLAND: Thank you, sir.

12 SEN. WATSON: I appreciate your being
13 here. I just have one thing I want to ask you about.
14 You didn't bring any information or statistics or
15 anything at all related to Texas and the impact that
16 this proposed bill would have on African-Americans or
17 Hispanics or people that don't speak English, anything
18 like that, did you?

19 MR. STRICKLAND: Nothing having to do
20 with Texas, no, sir.

21 SEN. WATSON: Thank you very much for
22 being here.

23 SEN. DUNCAN: Sen. Williams.

24 SEN. WILLIAMS: Thank you.

25 Mr. Chairman.

1 Mr. Strickland, you have -- I don't know
2 if you got to it in your remarks, because the time
3 expired, but I did read your written testimony. And
4 you make three points at the end of your report, and
5 one is that you talk about how important an
6 educational program is when any photo ID law is put
7 into place.

8 And I just wanted to share with you some
9 of the things that we're doing in Texas through the
10 Secretary of State's office that have to do with voter
11 education and the kinds of things that we could easily
12 incorporate any change in the election law into these
13 sorts of things and see if this was the sort of thing
14 you were referring to.

15 In television and radio ads, we have
16 three different 60-second spots in English. "High
17 Tech", "Special Needs" and "New Voter" are the titles
18 of those. I'm not going to play them for the
19 committee, but they're available on the Secretary of
20 State's website in Spanish. We also have three
21 60-second radio spots: A father-daughter, a special
22 needs voting radio spot and a man on the street.

23 In addition, we have one, two, three,
24 four, five -- six English version television spots and
25 four Spanish version 15-second spots: "Learn How to

1 Vote," "Special Needs Voters," "Voting Machines,"
2 "Register By," the Secretary of State saying, "You can
3 vote," "Learn How to Vote," "Vote in Spanish" and
4 "Register By" and then the "You Can Vote," also those
5 last four in Spanish so that we have the same ad
6 sometimes in English and Spanish.

7 And then we also have on that same
8 website, you know, a number of links -- Voter Facts.
9 Where Do I Vote? What's my District? How Do I Vote
10 Early? -- that sort of thing that is on the Secretary
11 of State's website. Are those just generally --
12 without getting too specific, because our states are
13 different -- generally speaking, are those the kinds
14 of voter education projects that you ran in your
15 state?

16 MR. STRICKLAND: Yes. And I would say
17 that the program you just outlined goes considerably
18 beyond what was done in Georgia.

19 SEN. WILLIAMS: Is that right? Now, one
20 other thing that you mentioned in your remarks that I
21 wanted to follow up on -- give me just a second. It's
22 also near the end of your remarks.

23 And beginning on Page 6, at the very
24 last line, you say, "While critics of the photo ID law
25 contend that it will be administered in a racially

1 discriminatory fashion, there is absolutely no support
2 for that allegation, just as there is no support for
3 the notion that requiring a photo ID is
4 unconstitutionally burdensome."

5 Are you familiar with the Crawford vs
6 Marion County Supreme Court case?

7 MR. STRICKLAND: Yes, generally
8 speaking.

9 SEN. WILLIAMS: Okay. And I believe --
10 well, I know. I've got a copy of the case here. And
11 then the Supreme Court said about this very issue, "A
12 photo identification requirement imposes some burdens
13 on voters that other methods of identification do not
14 share. For example, a voter may lose his photo
15 identification, may have his wallet stolen on the way
16 to the polls, or may not resemble the photo in the
17 identification because he [has] recently [grown] a
18 beard," all things that we've heard these sorts of
19 problems on the floor today.

20 But the Supreme Court concluded, as you
21 did in your remarks, that "Burdens of that sort
22 arising from life's vagaries, however, are neither so
23 serious nor so frequent as to raise any question about
24 the constitutionality . . .; the availability of the
25 right to cast a provisional ballot provides an

1 adequate remedy for problems of that character."

2 And I believe you say in your remarks
3 that you have that same kind of provisional voting in
4 the Georgia law. Would you describe for the committee
5 briefly what that entails.

6 MR. STRICKLAND: Yes, sir. It's a
7 48-hour requirement. In other words, if the voter,
8 using one of the hypotheticals that you presented, has
9 a difficulty that you outlined, then that person is
10 instructed by the poll worker to return to a
11 registrar's office within 48 hours to validate his or
12 her identification.

13 SEN. WILLIAMS: And Fulton County is the
14 most populous county in the State of Georgia. And how
15 many people have you had come back to -- that have
16 been challenged -- first of all, how many people have
17 been challenged on that? And then I'm curious how
18 many have actually come back.

19 MR. STRICKLAND: Out of the statistics I
20 presented a moment ago, with well over 400,000 voters,
21 there were 93 people who did not have a photo ID.
22 Each was instructed to present a photo ID within 48
23 hours. Only one did.

24 SEN. WILLIAMS: Okay.

25 MR. STRICKLAND: As a follow-up to that,

1 each person who did not appear was sent a letter
2 reminding that voter of the process and of the photo
3 ID requirement.

4 SEN. WILLIAMS: Now, our provisional
5 voting that we have here in Texas does not require the
6 voter to come back so that their vote may be counted.
7 Wouldn't you think that would be even less burdensome
8 than what you have in Georgia?

9 MR. STRICKLAND: No question.

10 SEN. WILLIAMS: And then we also, under
11 the provisions of this bill, allow alternative forms
12 of identification that would include government
13 documents and official papers -- I don't want to go
14 through the whole list, because it's so late -- but
15 one photo ID or two of any of the following, a laundry
16 list, do you think that also would relieve the burden
17 from some of those folks that might not have a photo
18 ID? Would it make it less burdensome?

19 MR. STRICKLAND: Less burdensome. It is
20 less stringent than the Georgia law or the Indiana
21 law.

22 SEN. WILLIAMS: Okay. Thank you so
23 much. I appreciate you being here with us tonight.

24 MR. STRICKLAND: Thank you, sir. By the
25 way, the president pro tem of the Georgia Senate is

1 Tommy Williams.

2 SEN. WILLIAMS: Yes. I run in to him
3 all the time at conferences and see his name on the
4 Internet. We spell our first name differently,
5 though.

6 MR. STRICKLAND: I noticed that.

7 SEN. WILLIAMS: He's an "ie," and I'm a
8 "y."

9 SEN. WHITMIRE: Mr. President, Chairman?

10 SEN. DUNCAN: Sen. Whitmire. State your
11 purpose.

12 SEN. WHITMIRE: Mr. Strickland, on Page
13 6 --

14 SEN. DUNCAN: Well, hold a minute. I
15 think you're out of order. I'm sorry, Senator.
16 You're not -- I thought you had an inquiry.

17 SEN. WHITMIRE: Oh, no. I'm sorry.

18 SEN. DUNCAN: Sen. Ogden is next in
19 line. I'm sorry.

20 SEN. OGDEN: I yield to Sen. Whitmire.

21 SEN. DUNCAN: Senator Whitmire.

22 SEN. WHITMIRE: The education component
23 you emphasize is so important, and on Page 6 you give
24 great credit to the Georgia Secretary of State, her
25 staff and the members of the State Election Board.

1 Could you tell us what the entity, the State Election
2 Board, consists of, how they're chosen and what are
3 their responsibilities?

4 MR. STRICKLAND: The State Election
5 Board is appointed by the Governor, and the Secretary
6 of State is the Chairman of that board. And in
7 general, they do not run the elections as such.
8 They're more of a review body for problems in
9 connection with the election.

10 The elections are run, as I'm sure is
11 the case in -- as far as I know is the case in Texas,
12 by the county election boards --

13 SEN. WHITMIRE: You also mentioned your
14 county election officials. Would it impact your
15 judgment, what you're here speaking and recommending
16 for Texas, to know that we do not have such an entity,
17 we do not have a state election board, which you said
18 played a vital role in the education of your voters?

19 MR. STRICKLAND: I think the role of the
20 Secretary of State was considerably more important
21 than the State Election Board. I just included them
22 in the list of persons who were involved. But our
23 Secretary of State, Karen Handel, really stepped out
24 and took a leadership role. And I would say the State
25 Election Board --

1 SEN. WHITMIRE: Do you have an
2 approximate --

3 MR. STRICKLAND: -- incidental.

4 SEN. WHITMIRE: Do you have an
5 approximate what your budget was to carry out this
6 educational process that you speak of?

7 MR. STRICKLAND: The number that I
8 recall -- and I was not directly involved in that --
9 is around \$600,000. Now, the director of our
10 Elections Division is a witness that will testify
11 later here and give you the number.

12 SEN. WHITMIRE: Of course, you obviously
13 realize Texas would be much larger and it would be
14 logical to assume it would be probably several times
15 that cost?

16 MR. STRICKLAND: I would assume that to
17 be the case.

18 SEN. WHITMIRE: And my colleague was
19 referencing that we have spots prepared. I was
20 anxious to ask him -- you know, it's great that we
21 have the spots. But, obviously, we have to have the
22 budget and the implementation to make that redundant
23 enough. Like any other campaign, the voters are going
24 to have to hear that numerous times. I do not
25 believe, looking at our Secretary of State's budget,

1 that that is accounted for.

2 SEN. WILLIAMS: I'll put it in.

3 SEN. WHITMIRE: Beg your pardon?

4 SEN. WILLIAMS: I'll put it in.

5 SEN. WHITMIRE: You will put it in the
6 budget? Well, I'm sure we will have a chance to
7 discuss that. In fact, I'm going to yield to our
8 Chairman of Finance.

9 I appreciate you being here and I know
10 you mean well. I just pause because I think Georgia
11 is a fine state. And we're just so much more diverse,
12 larger and in some instances maybe more complicated
13 than you. So I look forward to my colleagues telling
14 me what we're going to do with all of those spots. If
15 they remain in the can and do not have the proper
16 budget, I don't think they will ever be nearly as
17 successful as you speak of in Georgia.

18 SEN. DUNCAN: Sen. Ogden.

19 SEN. OGDEN: Mr. Strickland, thank you.

20 Sen. Williams alluded to this, and I
21 want to go back to a question that Sen. Watson asked a
22 minute ago. And I may ask -- if I get the question
23 incorrect, I would ask Sen. Watson to correct me. But
24 I think he asked if, in your testimony, you said
25 anything about the potential for ethnic discrimination

1 in Texas, I think was his question.

2 Is that right?

3 MR. STRICKLAND: That's pretty close.

4 SEN. OGDEN: And your answer was "No"?

5 MR. STRICKLAND: Correct.

6 SEN. OGDEN: But I would at least like
7 to say -- and I would like you to comment on this --
8 is that in your written testimony you basically
9 address that issue from a Georgia perspective. And on
10 Page 6, you say that, "From time to time, the argument
11 has been made that no matter how much election
12 officials and poll workers are educated on the topic,
13 the requirement will be administered in a racially
14 discriminatory fashion. That argument is a red
15 herring," and I would like you to amplify that,
16 please.

17 MR. STRICKLAND: Well, the example I
18 gave in my testimony -- and I may have run out of time
19 before I got to it -- was the election Board with
20 which I'm involved in Fulton County, which is a
21 racially diverse county. And, as I said, we have a
22 bipartisan board and our board appoints the director
23 of the department.

24 And for a number of years, that person
25 has been an African-American woman, and that's the

1 case today. And what I said was that approximately
2 95 percent of the full-time Election Department staff
3 is African-American. And also that during our primary
4 general elections, the demographics of the poll
5 workers is in excess of 50 percent African-American.
6 So I took the position that it simply does not make
7 sense that that group of people is going to
8 discriminate against minority voters.

9 SEN. OGDEN: Okay. Thank you.

10 SEN. DUNCAN: Sen. Ellis.

11 SEN. ELLIS: Thank you, Mr. Strickland;
12 thank you for being here.

13 Briefly, you mentioned some 89 or 75
14 provisional ballots, I think. I can't remember the
15 number.

16 MR. STRICKLAND: 93.

17 SEN. ELLIS: 93 that were --

18 MR. STRICKLAND: What I said was, there
19 were 93 persons out of over 400,000 in Fulton County
20 that did not have an acceptable form of photo ID.

21 SEN. ELLIS: And you said under your
22 statute in Georgia, they have 48 hours --

23 MR. STRICKLAND: Correct.

24 SEN. ELLIS: -- to bring something to
25 prove they are that person, only one person came in?

1 MR. STRICKLAND: Right.

2 SEN. ELLIS: Okay. Now, in your statute
3 it lays out the process, unlike -- although I know you
4 have not read it -- the Texas statute is quiet on
5 that, the bill that he has here. Now, out of the ones
6 that didn't come in, does anyone go do an analysis if
7 part of the rationale behind the statute in Georgia is
8 to deal with the issue of voter fraud, did anybody go
9 and check, someone go and check and see what was up
10 with the ones who did not come back and prove they
11 were who they said they were when they voted?

12 MR. STRICKLAND: Not to my knowledge.
13 As I mentioned a moment ago, a follow-up letter was
14 sent to the people; that is, the 92 that did not
15 return.

16 SEN. ELLIS: Yes. And only 92 out of
17 400,000 in Fulton County voting may not seem like a
18 lot, but -- my mother-in-law lives in Atlanta -- if
19 there is a close legislative race or Senate race or
20 city council race, as we had here. We had one
21 election for a House seat -- they have been enlarging
22 House seats in Georgia, about 150,000 people per House
23 seat -- it could determine whether or not someone won.
24 Does anybody do an analysis to see the ethnic or
25 racial makeup of those folks who did the provisional

1 ballot but didn't show up to prove they were who they
2 said they were?

3 MR. STRICKLAND: I don't know the answer
4 to that, Senator. I'm sorry.

5 SEN. OGDEN: Okay. Thank you for
6 coming.

7 MR. STRICKLAND: Thank you, sir.

8 SEN. DUNCAN: Sen. Hinojosa.

9 SEN. HINOJOSA: Thank you, Mr. Chairman.
10 Mr. Strickland, I think Sen. Williams
11 was asking you a question concerning the educational
12 programs by your Secretary of State, and you mentioned
13 that they were using websites. And you said you
14 really didn't know the cost of a training program, so
15 educational programs. Do you know they provided
16 computers for people who could not afford computers?

17 MR. STRICKLAND: I don't.

18 SEN. HINOJOSA: Also I guess in the
19 State of Georgia, do you have poll watchers?

20 MR. STRICKLAND: Poll watchers?

21 SEN. HINOJOSA: Yes, who they show the
22 voter ID to?

23 MR. STRICKLAND: Oh, they show that
24 to -- when you walk in the polling place, you sign a
25 voter certificate, indicating your name, your address,

1 and you say you're eligible to vote in that election.
2 That begins the voting process.

3 And in my own polling place, at that
4 particular step I'm asked to produce a photo ID. And
5 that really carries over to the -- we have a device
6 called an express poll. It's a little touch screen
7 device that verifies that -- in other words, if I
8 present my voter certificate with my name on it, then
9 the poll worker who has seen my photo ID then punches
10 my name or the first two or three letters of my name
11 into the express poll machine, which is really the
12 database of registered voters, and confirms the fact
13 that I am a properly qualified voter to vote at that
14 precinct. So I'm showing the identification to the
15 poll worker, as distinguished from a poll watcher who
16 in Georgia would be a volunteer for each political
17 party who is observing the election but is not, in
18 fact, a poll official.

19 SEN. HINOJOSA: So I guess, are you
20 using a driver's license or some type of photo ID --

21 MR. STRICKLAND: Yes.

22 SEN. HINOJOSA: -- that has some type of
23 information on the back that can be scanned?

24 MR. STRICKLAND: Unfortunately, we do
25 not have the ability to scan. That would considerably

1 increase the speed of processing. In other words,
2 we're using this thing that I describe as an express
3 poll. If we had the bar code on the back, it would be
4 a matter of zipping it through that device and
5 verifying it that way. It would be much faster than
6 the manual punching.

7 SEN. HINOJOSA: And do you know what the
8 cost would be of that express poll that you're using
9 in Georgia?

10 MR. STRICKLAND: The express poll
11 device? I don't know. We spent a lot of money to go
12 to the touch screen voting, and the express poll
13 machines were acquired at about the same time, at
14 considerable cost. And I do not recall the cost.

15 SEN. HINOJOSA: And do you have those
16 express polls in each precinct?

17 MR. STRICKLAND: Yes, several of them,
18 depending on the number of registered voters at that
19 precinct.

20 SEN. HINOJOSA: And you said the cost
21 was considerable. Do you know how much, a ballpark
22 figure?

23 MR. STRICKLAND: I cannot give you a
24 ballpark. I'm sorry.

25 SEN. HINOJOSA: So for us who want to do

1 the same thing, even though it slows down the process,
2 would have to invest quite a bit of money in providing
3 the funds to the precincts in our state?

4 MR. STRICKLAND: Well, I think in every
5 polling place, there has to be some verification of
6 the voter being on the registered voters list for that
7 particular precinct. So this is a form of
8 verification. It happens to be computer-driven. But
9 as far as I know, in every polling place in every
10 state, there has to be verification that the voter is,
11 in fact, on the registered voters list.

12 SEN. HINOJOSA: Yes. And one of the
13 questions that I asked the author of this legislation
14 here is that we don't have a way to verify whether or
15 not the photo ID is fake or a bad one, because here in
16 Texas, you can go buy a fake photo ID at a flea
17 market.

18 MR. STRICKLAND: I'm not a computer
19 expert, but I would think the problem with a fake
20 photo ID would be the bar code.

21 SEN. HINOJOSA: And you're right, you're
22 exactly right, the bar code. But the problem is that
23 we're not using the type of equipment that you're
24 using in Georgia to verify whether or not that's a
25 valid ID. So that's a problem that we have in the

1 present legislation, the way it's drafted.

2 MR. STRICKLAND: Yes. I think
3 verification is an important part of the process. And
4 I will take your word for it on how it's done in
5 Texas.

6 SEN. HINOJOSA: Thank you.

7 SEN. DUNCAN: Sen. Watson.

8 SEN. WATSON: Yes. Thank you,
9 Mr. Chairman.

10 I'm sorry. I thought I was done. But
11 since Chairman Ogden asked a question and called out
12 something related to what I had asked you, I thought I
13 need to follow up.

14 He pointed to a part of your testimony
15 on Page 6 where he specifically quoted language
16 regarding where you said that the requirement will be
17 administered in a -- it talks about the requirement
18 being administered in a racially discriminatory
19 fashion. And, of course, you go on to say that that
20 is a red herring and, frankly, nonsense, to use your
21 words.

22 So in that area, in answer to Chairman
23 Ogden's questions, you were talking about the
24 administration of it being done in a racially
25 discriminatory fashion. Is that correct?

1 MR. STRICKLAND: What I meant to say,
2 the way the sentence is constructed, it really means
3 in a non-discriminatory fashion.

4 SEN. WATSON: Gottcha! But in any
5 event, it's talking about how it's administered.
6 Right?

7 MR. STRICKLAND: Yes.

8 SEN. WATSON: And, of course, you -- and
9 maybe you don't know. But are you aware that under
10 Section 5 of the federal Voting Rights Act, it isn't
11 just about whether it's administered in a
12 discriminatory fashion, it's whether or not it has the
13 purpose or effect. Are you familiar with that?

14 MR. STRICKLAND: I am familiar with
15 that.

16 SEN. WATSON: And when I ask you about
17 Texas and your familiarity with Texas, you wouldn't
18 know, for example, whether in Texas, in other things,
19 other issues related to voting, you wouldn't know
20 whether Texas has some history of folks removing the
21 names of eligible voters from the list of registered
22 voters where the poll list of precincts, in a way
23 where they would then not be allowed to vote, do you?

24 MR. STRICKLAND: I have no knowledge of
25 that.

1 SEN. WATSON: You don't have any
2 knowledge about poll workers refusing to accept people
3 for voting, even though their acceptance might be
4 required?

5 MR. STRICKLAND: No knowledge of that.

6 SEN. WATSON: About whether people have
7 provided false information to voters about voting
8 procedures resulting in people failing to then go
9 ahead and vote?

10 MR. STRICKLAND: I'm not familiar with
11 that.

12 SEN. WATSON: Or anything like providing
13 false information about where a voting place is or
14 what day people might vote?

15 MR. STRICKLAND: I have not made a study
16 of Texas voting procedures.

17 SEN. WATSON: Okay. Now, although you
18 indicate that you don't believe that in Georgia the
19 requirement has been administered in a racially
20 discriminatory fashion, at least in your area of
21 Georgia, you are familiar with studies such as that
22 put out by the Brennan Center where it indicated that
23 in Georgia in 2007, in some local elections, some
24 limited turnout elections, there were voters' ballots
25 rejected because of the voter ID law, weren't you?

1 MR. STRICKLAND: I'm not familiar with
2 the Brennan Center study, though.

3 SEN. WATSON: Okay. So you wouldn't
4 know whether, in that Brennan Center study, it also
5 pointed out in the 2008 presidential primary that
6 number of people that were -- ballots that were
7 rejected because of Georgia's voter ID law grew into
8 the hundreds, and you just wouldn't have any way of
9 knowing anything about that?

10 MR. STRICKLAND: As I said a moment ago,
11 I'm not familiar with the Brennan Center study.

12 SEN. WATSON: Okay. Fair enough. Since
13 we were talking about Texas a minute ago -- and I want
14 to be clear on what it was that I was asking questions
15 about that Sen. Ogden decided that he needed to ask
16 about, too. Let me ask this more specifically.

17 You're not here tonight able to provide
18 the folks that are going to vote on whether to
19 implement SB 362, which would put new requirements on
20 people in Texas trying to vote, you're not here
21 providing us with any sort of statistical analysis of
22 the effect -- administration or not, but of the effect
23 of that new requirement on African-Americans,
24 Hispanics, people making less than \$35,000 a year,
25 people who speak only Spanish or Vietnamese or senior

1 citizens, anybody like that, are you?

2 MR. STRICKLAND: I can't comment on how
3 things would work in Texas. What I did try to say in
4 my testimony and otherwise is that a number of similar
5 arguments were made in Georgia, and we just simply
6 have not had that experience.

7 SEN. WATSON: And one of the
8 differences, of course, in Georgia versus Texas is,
9 Georgia's Hispanic population is what, about
10 7 percent?

11 MR. STRICKLAND: That sounds about
12 right.

13 SEN. WATSON: Do you know anything about
14 colonias in Texas?

15 MR. STRICKLAND: I do not.

16 SEN. WATSON: How many media markets are
17 there in Georgia?

18 MR. STRICKLAND: Well, there's one
19 gigantic market in the Atlanta area, and the others I
20 would consider submarkets. Perhaps a half dozen.

21 SEN. WATSON: All right. Do you know
22 whether that's different than in Texas?

23 MR. STRICKLAND: Well, I know Texas has
24 some much larger cities than our other cities in
25 Georgia besides Atlanta. I don't know the exact

1 number of media markets, though.

2 SEN. WATSON: Well, I'll let you know
3 that it's quite a bit more media markets, and so it
4 might also make a big difference with regard to that
5 education requirement you talked about.

6 Appreciate your being here tonight.
7 Thank you very much.

8 MR. STRICKLAND: Thanks so much.

9 SEN. DUNCAN: The Chair recognizes
10 Sen. Uresti.

11 SEN. URESTI: Mr. Strickland, good
12 evening and welcome to Texas.

13 MR. STRICKLAND: Thank you, sir.

14 SEN. URESTI: Thank you for being here.
15 I know you've come a long way, and we do appreciate
16 your testimony.

17 Mr. Strickland, I just have a few
18 questions for you with regard to some of the comments
19 you mentioned earlier that I read in your written
20 testimony, specifically with regard to a couple of, I
21 believe, plaintiffs that you referenced. There were
22 two in particular that I think you indicated could
23 have obtained their photo ID. One was within seven
24 miles and I think was one within walking distance. Is
25 that correct, Mr. Strickland?

1 MR. STRICKLAND: That's correct.

2 SEN. URESTI: And what I'm trying to do
3 is draw the distinction and to kind of follow on what
4 Dean Whitmire mentioned earlier, draw a distinction
5 between the different -- State of Georgia, which I
6 know is a beautiful state, and Texas, specifically
7 with regard to the geographical area that is included
8 in both the states.

9 Would you agree with me that distance
10 could become a barrier with regard to obtaining an
11 individual's photo ID?

12 MR. STRICKLAND: I suppose it's
13 possible. As I pointed out in my testimony, we don't
14 have as many counties as you do, but we are the second
15 largest in number of counties, with 159. So we have
16 159 locations where a free photo ID can be obtained if
17 people don't already have some form of photo ID.

18 SEN. URESTI: Well, and I think the
19 biggest distinction would be, though, even though you
20 have 159 counties and we have 254 counties, is the
21 fact that Georgia, although I believe is a large
22 state, compared to Texas is a much smaller state, I
23 looked up Fulton County, which I understand is
24 Georgia's largest county, and the square mileage for
25 Georgia (sic) County is 520 miles. Is that correct?

1 MR. STRICKLAND: I'm sorry. I didn't
2 understand that question.

3 SEN. URESTI: The size of Georgia -- I
4 beg your pardon -- of Fulton County is 529 square
5 miles. Is that true?

6 MR. STRICKLAND: Yes, I believe that's
7 correct.

8 SEN. URESTI: And, in fact, the size of
9 Georgia, the State of Georgia, is 59,424 square miles.
10 Is that correct?

11 MR. STRICKLAND: Yes. It's the largest
12 state east of the Mississippi River.

13 SEN. URESTI: And the reason I point
14 that out -- and I don't know if you heard my testimony
15 earlier when I was talking to Sen. Fraser. And, in
16 fact, as a backdrop to my questions was the size of my
17 senatorial district, which is almost the size of the
18 State of Georgia. The size of my senatorial district
19 graphically is 55,000 square miles, and the size of
20 the State of Georgia is 59,424 miles. So you can
21 almost fit the State of Georgia into my senatorial
22 district.

23 And so I throw that out to again ask the
24 question: Do you believe, now knowing the size of
25 just my district and, of course, the size of Texas,

1 would that be a challenge and, therefore, a barrier to
2 somebody obtaining a photo ID?

3 MR. STRICKLAND: I suppose it could be.
4 But it seems to me that most people at sometime or
5 other go to the population center where, at least in
6 Georgia, a free photo ID could be issued.

7 And as I think another witness
8 testified, in Georgia, the statistics were that there
9 were six and a half million driver's licenses in place
10 versus about 4,500,000 registered voters. So I think
11 that demonstrates that a substantial majority of
12 registered voters already had a form of photo ID; in
13 other words, this was not a new requirement, that
14 every voter in Georgia go out and obtain an entirely
15 different kind of photo ID. It didn't demonstrate
16 that 100 percent of registered voters had a photo ID,
17 just that in my view a substantial majority already
18 did.

19 SEN. URESTI: And I understand that,
20 Mr. Strickland, though your DPS offices, I assume, are
21 open Monday through Friday, 8:00 to 5:00?

22 MR. STRICKLAND: Well, we're not using
23 DPS offices; we're using the county voter registrar,
24 which keep normal business hours.

25 SEN. URESTI: Okay.

1 MR. STRICKLAND: And most likely they're
2 in the county courthouse of the county.

3 SEN. URESTI: Would it concern you,
4 though, if, in my district at least, some of the
5 counties, they have their DPS offices only open one
6 day a month? Do you think that would be a barrier for
7 somebody obviously trying to obtain their photo ID?

8 MR. STRICKLAND: Well, it certainly
9 could be.

10 SEN. URESTI: Mr. Strickland, I
11 appreciate it, and thank you very much. And welcome
12 to Texas.

13 MR. STRICKLAND: Thank you, Senator.

14 SEN. DUNCAN: Thank you, Mr. Strickland.
15 There are no other members queued up to speak, so you
16 will be excused. Appreciate your testimony.

17 MR. STRICKLAND: Thank you, sir.

18 SEN. DUNCAN: The Chair calls Mr. Adam
19 Skaggs.

20 MR. SKAGGS: Thank you, Mr. Chairman.
21 Thank you, Senators, for giving me the opportunity to
22 speak with you today.

23 SEN. DUNCAN: Mr. Skaggs, if you would,
24 let me do a little housekeeping. I think we have
25 Exhibit 24, which is your written testimony. Is that

1 correct?

2 MR. SKAGGS: Yes, sir.

3 SEN. DUNCAN: Okay. We'll go ahead and
4 put that in the record.

5 (Exhibit No. 24 marked and admitted)

6 SEN. DUNCAN: And then if you will state
7 your name and who you represent. You have 10 minutes.

8 **TESTIMONY BY ADAM SKAGGS**

9 MR. SKAGGS: Certainly. Thank you,
10 Mr. Chairman.

11 My name is Adam Skaggs. I am counsel at
12 the Brennan Center for Justice at NYU School of Law in
13 New York City. Brennan Center is a non-profit,
14 non-partisan public policy and legal advocacy
15 organization, and we focus on fundamental issues of
16 justice and democracy. Among other things, we promote
17 policies that ensure fair and accurate elections and
18 that maximize citizen participation in the electoral
19 process. Our work toward these goals has included
20 extensive research and the publication of studies and
21 reports, assistance to state and federal policymakers
22 and advice on electoral legislation and, when it's
23 become necessary, participation in litigation to
24 protect the fundamental right to vote.

25 As part of this work, we have paid

1 particular attention to the debate over strict voter
2 identification policies. We've commissioned research
3 on the number of citizens who lack documentary proof
4 of identity, and we have participated as an amicus in
5 litigation over strict voter ID policies in Indiana,
6 Georgia, Arizona and Albuquerque, New Mexico.

7 A central part of these efforts has been
8 our research on allegations of voter fraud. We've
9 analyzed claims of rampant voter fraud in order to
10 distinguish unfounded and exaggerated tales of fraud
11 from reliable, verified claims of election misconduct.

12 We published the results of this
13 analysis in a monograph entitled "The Truth About
14 Voter Fraud," which compiles methodological flaws that
15 have led to allegations of voter fraud and debunks
16 baseless -- though often repeated -- reports of voter
17 fraud. In my testimony today, I want to share some of
18 our findings.

19 Our findings illustrate the SB 362 makes
20 little sense as a matter of policy, for three reasons.
21 First, SB 362 does not fix any notable problem that
22 Texans have experienced. Second, to bolster their
23 case, supporters of SB 362 cite a number of problems
24 that the bill would not correct and would not address,
25 and that misleads the public into thinking that the

1 proposal would accomplish more than it ever possibly
2 could.

3 The last and perhaps the most important
4 reason that SB 362 is likely to create problems, the
5 problems it creates are going to be far worse than the
6 single problem that it even has the potential to cure.
7 Some of my colleagues have already discussed that
8 third issue. I'll focus my testimony on the first
9 two.

10 Because we have found virtually no fraud
11 of the type that a voter identification requirement
12 could fix, the Brennan Center is frequently charged
13 with denying the existence of voter fraud. This is
14 inaccurate, and I want to state that this evening with
15 absolute clarity. Unfortunately, some forms of
16 election fraud and misconduct do occur with some
17 frequency. Last year, for example, as in the past,
18 there were repeated instances of voter misinformation
19 and intimidation, such as when voters were told
20 erroneously that they would be arrested if they tried
21 to vote and had any unpaid parking tickets, or when
22 voters were given misinformation about where they
23 could vote, where their precincts were, the hours they
24 were open.

25 We've seen repeated instances in which

1 election officials, without justification, have denied
2 registration to individuals who are eligible to
3 register and vote. In the last year, for instance, we
4 saw this problem with college students in a number of
5 different communities. Occasionally we've seen
6 individuals offer to sell their votes, and we've seen
7 individuals vote in jurisdictions in which they do not
8 reside.

9 And there have also been confirmed
10 examples of fraud and misconduct involving absentee
11 ballots. Some of this fraud has involved coercion or
12 bribing of absentee voters. Some of these instances
13 have involved schemes to submit multiple fraudulent
14 absentee ballots. All these acts should be and must
15 be condemned. When it exists, election fraud and any
16 kind of electoral misconduct should be investigated
17 and it should be published, and it often is.

18 Finally, I want to just observe that
19 there are some examples of mistakes made by
20 individuals who register to vote when they're not
21 eligible but without realizing that they're
22 ineligible. We saw examples in Arizona, for example,
23 where individuals who were applying to become citizens
24 and who had received letters from the immigration
25 authorities congratulating them and telling them that

1 their application for citizenship had been approved,
2 registered to vote but before they had actually
3 formally taken the oath of citizenship.

4 And we saw an example in Wisconsin where
5 somebody showed up to vote, presented his prisoner
6 identification card that had the word "OFFENDER"
7 stamped in bold face across the face of it, and that
8 individual was actually allowed to vote.

9 Now, that's unfortunate. Obviously,
10 that individual shouldn't have been able to vote, and
11 those folks who hadn't completed the application for
12 citizenship should not have been registered. But
13 these are examples of error; they're not examples of
14 anyone trying to misrepresent their status or trying
15 to intentionally commit fraud. These folks shouldn't
16 be allowed to register to vote. But publicizing the
17 eligibility requirements and training poll workers is
18 a far more effective answer to those issues, those
19 human errors, than it is to require every single
20 eligible citizen in the state to present documentary
21 proof of identification of the sort that's proposed
22 here.

23 As to allegations of other types of
24 voter fraud, including many of the ones we've heard
25 discussion about today, our research has indicated

1 that these claims proved baseless in all but the most
2 limited exceptions. Except in the rarest of cases,
3 these involve crying wolf. This is true of the most
4 frequently reported forms of punitive voter fraud --
5 double voting, voting in the names of dead people and,
6 most importantly, for the purposes of this hearing,
7 impersonation of registered voters at the polls.

8 Our exhaustive research reveals that
9 there is little to no credible evidence of
10 impersonation fraud in Texas or anywhere else in the
11 country, and that's the only form of misconduct that
12 this proposal would address. This is worth repeating:
13 The only problem that a voter ID requirement like SB
14 362 could possibly fix doesn't exist. Texans are
15 struck and killed by lightning more often than
16 impersonation fraud occurs, and there are far, far
17 more reports of UFOs every year than there are
18 instances of impersonation at the polls.

19 There are a number of reasons why
20 reports of fraud, impersonation fraud at the polling
21 place occur, but that they crumble when they're
22 subjected to scrutiny. First, a number of these
23 claims are based on attempts at data matching. We've
24 heard a bit about this today. This is when you
25 attempt to use computerized matching of data from the

1 voter rolls against some other source of data; for
2 example, death records. And because of problems with
3 this data matching, the protocols that are used, it
4 often results in false positives, false indications of
5 somebody on the vote rolls who is also on one of these
6 lists.

7 For example, if matching is conducted
8 without controlling for a suffix like "Jr.," then John
9 Smith, Jr., may be thought to be the same person as
10 John Smith, Sr., who has died, and that will result in
11 a false report of somebody casting a vote in the name
12 of someone who is ineligible.

13 In Florida in 2000, we saw a matching
14 protocol used that only required a match of 80 percent
15 of the letters in the last name. So, for example,
16 someone with the last name of Ellis would be matched
17 with someone with the last name of Ellison. 20,000
18 voters, more than 20,000 voters were purged from the
19 rolls in that instance, and many of them were
20 frequently revealed to be inaccurate.

21 There are also a number of erroneous
22 reports of impersonation fraud that result from
23 clerical errors either on the part of poll workers or
24 on the part of the voter, such that when somebody
25 signs their name on the wrong line next to a voter

1 with a very similar name or when a poll worker at the
2 end of the day scans the wrong bar code for a voter
3 and ends up recording erroneously that somebody voted
4 when they didn't.

5 Both of these sorts of problems turned
6 up in the claims of impersonation fraud that were
7 lobbed about before the 2008 election by the Texas
8 Watchdog website. They had a big story with a
9 dramatic headline -- "Dead Voters Cast Ballots in
10 Dallas County" -- and they provided 48 specific votes
11 that were questioned. Poll books and signature
12 rosters were available for 47 of these. And after a
13 very careful review, the Dallas Morning News concluded
14 that none involved a fraudulently cast vote.

15 So there are numerous since-debunked
16 reports of voter fraud, and these reveal that there
17 are very few, little to no examples of any confirmed
18 impersonation fraud. That's not for lack of trying.
19 You've heard about the five-year investigation by the
20 Department of Justice which failed to charge any
21 individual with impersonation fraud.

22 Here in Texas, Attorney General Abbott
23 spent two years and \$1.4 million fighting voter fraud,
24 didn't indict a single person for impersonation fraud.
25 There are obvious reasons -- I just want to mention

1 the obvious reasons why impersonation fraud occurs so
2 rarely, if ever. The risk of getting caught for
3 attempting this crime is particularly high. The
4 penalties are very strict. And there's hardly any
5 payout. Under federal law, anybody that attempts this
6 is subject to imprisonment for five years, fine of
7 \$10,000. Under Texas law, that's 10 years in prison.
8 And if you're not an American citizen, you'll be
9 deported if you try and get away for this.

10 And bear in mind, the payoff for this is
11 extremely limited -- one single vote. If you were
12 really intent on defrauding the electoral system,
13 would you not choose a crime that gave you more bang
14 for the buck? Or would you risk 10 years in jail and
15 a \$10,000 fine to, as we heard earlier today, go over
16 to your neighbor's house, steal their voter
17 certification out of their mailbox and then attempt to
18 cast a ballot in that person's name?

19 I think the answer to that is obvious,
20 and I think that goes a long way in explaining why
21 impersonation fraud rarely, if ever, occurs in spite
22 of all the heated and ultimately misguided rhetoric
23 that we hear on this issue.

24 I see that my time is up, so I will end
25 there and would welcome any questions. Thank you.

1 SEN. AVERITT: Sen. Davis, for what
2 purpose?

3 SEN. DAVIS: May I please ask questions
4 of this witness? Thank you, Mr. President.

5 **QUESTIONS FROM SENATE FLOOR**

6 SEN. DAVIS: Mr. Skaggs, I have a few
7 follow-up questions for you. And thank you for being
8 here and for your testimony before this body today.

9 What did the Brennan Center's 2006
10 national survey show about the percentage of people
11 who cannot prove citizenship or who lack government-
12 issued photo ID?

13 MR. SKAGGS: Well, it concluded a number
14 of things. First of all, the basic conclusion was as
15 many as 11 percent of U.S. citizens. And according to
16 census data at that times, that's more than 20 million
17 individuals didn't possess government-issued photo
18 identification. So that's the baseline, and that's
19 consistent with research that a number of other
20 studies have concluded.

21 But I think as much as that is an
22 alarming figure and as much as a 10 or 11 percent
23 figure would suggest, an unacceptably high number of
24 Texans who lack the kind of government-issued
25 documentary identification that will be required under

1 SB 362, as much as the gross figures are cause for
2 alarm, the distinctions within that data are equally
3 alarming.

4 For example, elderly citizens are much
5 more likely to lack the kind of government-issued
6 identification that would be required under this bill.
7 18 percent, our survey found, of American citizens
8 above the age of 65 did not have government-issued
9 photo ID. That's true of photo ID.

10 And we've also heard anecdotally this
11 afternoon, or this evening, that many senior citizens
12 living, for example, at assisted living facilities
13 also lack a number of the non-photo forms of
14 identification that this bill could contemplate. They
15 may not have utility bills in their name. They may no
16 longer have bank statements. Certainly pay stubs
17 often they wouldn't have. So that's a concern for
18 seniors.

19 Minority citizens, citizens of color are
20 also disproportionately likely to lack these sorts of
21 government-issued identification documents. Our
22 survey found that 25 percent of African-American
23 citizens lacked the sort of ID that we're talking
24 about here.

25 And finally, the other issue of concern

1 which we've heard about today is that citizens with
2 low incomes are much, much more likely to lack the
3 sorts of ID that we're talking about. Our survey
4 found that citizens making less than \$35,000 per year
5 are more than twice as likely to lack
6 government-issued identification as citizens making
7 more than that. And we've heard already today in
8 testimony from some of my colleagues about the huge
9 number of Texans who fall beneath that income level.

10 SEN. DAVIS: With that being said, how
11 is it that voter fraud is not a problem, if both the
12 U. S. Department of Justice and the Texas Attorney
13 General have launched widespread investigations and
14 prosecutions of voter fraud?

15 MR. SKAGGS: Well, I think it's
16 important to be careful about the term we use here.
17 And I think it goes a bit far to say that voter fraud
18 isn't a problem. I think -- certainly I've tried to
19 make clear in my testimony that there are numerous
20 types of fraud that are problematic, that do cause
21 real threats to the integrity of our electoral system.
22 And I would encourage this body to take up some
23 policies that might address those sorts of things:
24 Voter intimidation, misinformation, denial of the
25 right to register to citizens based on illegal

1 reasons.

2 I think the point I'm trying to make is
3 that the form of fraud, the only form of fraud that's
4 at issue here with a big little SB 362, the
5 impersonation of a registered voter at the polls is
6 not a problem. It simply doesn't occur with any
7 frequency that would be sufficient to justify a bill
8 like this that has the potential to disenfranchise
9 many thousands of Texans.

10 So it's not fair really to say that
11 voter fraud isn't a concern. It's simply important, I
12 think, to speak in specific terms without generalizing
13 and muddying the waters, because when you're talking
14 about a bill like this that has the real potential to
15 disenfranchise many, many eligible Texas citizens,
16 it's got to be justified by something important. It's
17 got to be justified by a real problem, and that just
18 isn't the case here.

19 SEN. DAVIS: And in the State of Texas,
20 with the Attorney General investigations, can you
21 point to, given the result of those investigations,
22 the failure to demonstrate a problem with voter
23 impersonation?

24 MR. SKAGGS: Well, I think the results
25 of that investigation that I referred to by Attorney

1 General Abbott, as well as the national investigations
2 that the Department of Justice has sort of inspired
3 and that U.S. attorneys across the country have
4 focused their efforts on, I think the results of those
5 speak for themselves.

6 They have in the end uncovered
7 wrongdoing and misconduct surrounding elections. They
8 have indicted folks for such things as vote-buying
9 schemes, campaign finance irregularities, a number of
10 different sorts of crimes of the sort that just aren't
11 addressed by a voter identification law of the sort
12 that we're talking about tonight.

13 So the fact that these huge substantial
14 resources were put into these efforts, the amount of
15 publicly, the amount of effort, and though they came
16 up with certain problems that aren't at issue tonight,
17 they couldn't come up with a single indictment for
18 anybody who was actually guilty of impersonation fraud
19 I think speaks for itself.

20 SEN. DAVIS: And in your opinion, does
21 the Senate Bill 362 that's before us today address any
22 of the issues of fraud that were uncovered by the
23 Texas Attorney General in that lengthy investigation?

24 MR. SKAGGS: No.

25 SEN. DAVIS: Now, regarding the Indiana

1 case and the Supreme Court case, no party or amicus
2 cited even one case of impersonation at the polls in
3 Indiana, to the Supreme Court. Would it surprise you,
4 Mr. Skaggs, to learn that more Indiana voters have
5 been disenfranchised by the law in the last two years
6 than the number of reported cases of impersonation at
7 the polls cited to the Supreme Court or from anywhere
8 in the country in the last two decade?

9 MR. SKAGGS: No, I don't think that's
10 surprising. I think it's entirely consistent with the
11 point I was making earlier, that for all the rhetoric,
12 there's just not -- there's not any record of any
13 impersonation fraud. You're absolute right. During
14 the briefing presented to the Supreme Court -- and
15 there were briefs presented not only by the parties
16 but by dozens and dozens of groups on both sides of
17 the issue from all over the country, the Brennan
18 Center being one of those -- not a single one of the
19 briefs that were submitted had any confirmed evidence
20 of impersonation fraud.

21 But one of the groups in Indiana, the
22 Marion County Election Board, which was actually one
23 of the parties to the case, presented a brief in which
24 they represented to the Supreme Court that during the
25 2000 election, during some local elections in 2000, in

1 that one single county, in Indiana, Marion County,
2 32 voters cast ballots that were rejected, ballots
3 that didn't get counted because the voters had failed
4 to comply with the voter ID requirements.

5 And that's not unique to Indiana. If I
6 could expand on that, we heard a moment ago about some
7 of the numbers out of Georgia, the 33 voters that had
8 their votes thrown out because they lacked ID in 2007.
9 And we heard that that, in the 2008 primary, was up to
10 254, 254 Georgians who, because they lacked a
11 government-issued ID of the sort that was required,
12 had their votes thrown out.

13 The gentleman who testified before me
14 said he was unfamiliar with those figures which were
15 published, among other places, in a Brennan Center
16 report. He may be more familiar -- if he's not
17 familiar with Brennan Center's report, he might be
18 more familiar with the Houston Chronicle which just
19 this morning undated those figures with figures from
20 the 2008 General Election. So we saw in the primary
21 last year 254. During the general election, that
22 number rose up to 700 Georgia voters, more than 700,
23 who had their votes go uncounted because they were
24 unable to comply with these ID requirements.

25 Now, we also heard that out of I believe

1 it was 93 voters who showed up at the polls did their
2 honest best to try and cast a ballot, were forced to
3 vote a provisional ballot and that only one of those
4 individuals came back after the fact to actually
5 present the identification that was required. So
6 that's 92 out of 93 that had their votes cast away. I
7 don't think that's good math, that that many -- I
8 don't know what that is -- 98 percent, 97 percent. I
9 don't know what 92 out of 93 is -- but that that many
10 voters who cast their provisional ballot would have
11 their votes cast out I think should not be cause for
12 comfort, it should be cause for alarm.

13 MR. DAVIS: I think you're probably very
14 well aware of the fact that those of us on this Senate
15 floor who are concerned about the impact of adopting a
16 bill like Senate Bill 362 is the risk of
17 disenfranchising honest citizens in the State of Texas
18 and taking away from them the very precious right to
19 vote.

20 Given the numbers that you provided a
21 moment ago in terms of those who have been turned away
22 who were legally able to vote and, yet, under the new
23 photo ID requirements were not allowed to vote, how do
24 those numbers compare, those disenfranchised numbers
25 compare to real-world evidence in those particular

1 states of voter impersonation that was documented to
2 be happening at their polls?

3 MR. SKAGGS: Well, one side of the
4 ledger, we've got -- in one case 33 in Fulton County,
5 92 in the State of Georgia last year -- over 700.
6 That's on one side of the ledger. Those are just
7 votes that were tossed out because of this
8 requirement. On the other side we have zero. So the
9 balancing act is pretty clear if you ask me.

10 Now, it may be true that 92 or 93 votes
11 out of 400,000 is a pretty small percentage. I don't
12 think any of us would argue that. I would argue that
13 92 people having their votes thrown out because they
14 lacked some sort of government identification is
15 completely unacceptable. But that said, it is true
16 that in Georgia they did have an opportunity, even
17 though none of them took advantage of it, to show up
18 within a couple of days afterward and present some
19 sort of identification. Maybe they didn't show up to
20 do that because they weren't told clearly that they
21 had to do it. Maybe they didn't do that because they
22 didn't have the time or they didn't have the ability
23 to get off work to make many extra trip. And maybe
24 they just didn't have the documentary proof, so maybe
25 that's the reason. We don't know. As we heard, there

1 was no investigation done as to why those 92 people
2 were disenfranchised. We don't know. But at least in
3 Georgia, they had the opportunity to present that
4 identification and have their vote count, even if only
5 one of them did it.

6 It's interesting to me to hear just a
7 few minutes ago that Texas' provision for provisional
8 balloting is somehow less burdensome than what is the
9 policy in Georgia, because in Georgia at least these
10 voters are given the chance to make their vote count,
11 by coming in. Now again, it's difficult apparently
12 for them to do it. Most of them don't. At least they
13 have the opportunity.

14 This bill that is under consideration
15 tonight has no such provision. So a voter who doesn't
16 have the identification at the poll and is forced to
17 vote a provisional ballot under SB 362 has no
18 opportunity to show up and provide evidence to get
19 that vote counted. So it's hard for me, I guess, to
20 conceptualize how something would be less burdensome
21 that categorically gives you no chance of having that
22 provisional ballot get counted. To me that's not a
23 provisional ballot; that's a placebo ballot.

24 SEN. DAVIS: Very good point.

25 Also, Mr. Skaggs, voter ID advocates

1 cite studies that attempt to show voter ID laws do not
2 suppress turnout, and they even try to claim that
3 turnout increases in Indiana and Georgia were caused
4 by the voter ID laws. What are your thoughts on that
5 claim?

6 MR. SKAGGS: You know, again, I suppose
7 it's a good rhetorical point for proponents of such
8 policies, but I think it's a specious argument, and it
9 just doesn't withstand any kind of scrutiny,
10 statistically or otherwise. Any social science
11 methodology would suggest that those studies are
12 completely incredible.

13 Bear in mind that the main study we're
14 talking about that the first witness here this evening
15 discussed concluded that voter ID policies in Georgia
16 and Indiana actually drove voter turnout up, that
17 there was a casual relationship between adopting these
18 strict ID policies and turnout going up. And it came
19 to its conclusion by comparing Indiana with Illinois
20 and Georgia with Mississippi.

21 When asked about the possible
22 methodological flaws, Mr. von Spakovsky said, "We
23 controlled for any impact that Barack Obama's presence
24 on the ticket would have had in skewing this data,
25 because then Sen. Obama was not only on the ticket --

1 on the ballot in Indiana and Georgia, but he was also
2 on the ballot in Illinois and Mississippi. And that's
3 true insofar as it goes, but I don't think that goes
4 very far in explaining why we should give any
5 credibility to these studies.

6 What these studies didn't take account
7 of at all is the status of these states, the swing
8 states, the status of these as hotly contested
9 elections. There was no controlling for the amount of
10 advertising that was run in Indiana versus Illinois.
11 There was no taking account for number of candidate
12 appearances in Indiana versus Illinois of Georgia
13 versus Mississippi, the number of ads run by the
14 campaigns that are ads run by other interested groups.

15 So any study that fails to take account
16 this sort of intense mobilization efforts that were
17 poured into these states as compared to states,
18 Mississippi and Illinois, that one campaign had
19 essentially conceded and were ready hardly contested
20 at all because the results were a foregone conclusion,
21 any study that doesn't look at those factors -- the
22 amount of mobilization, the amount of money spent by
23 the campaigns and others -- is simply incredible.

24 Now, I'm not suggesting that changes in
25 turnout were caused specifically by the number of

1 appearances that the candidates made or their proxies
2 or the amount of advertising that either of the
3 campaigns put up. But what I am suggesting is that
4 first, those are much more I think credible
5 explanations of why voter turnout went up in those two
6 states and, secondly, that we simply can't -- the
7 point is that you can't prove what the causation was
8 in any of these cases. There are too many factors.
9 The studies that have been conducted are far too
10 crude.

11 So if there is any single take-away, I
12 would just suggest that any of these claims that voter
13 turnout actually goes up because of strict voter ID
14 requirements and some resulting increase in confidence
15 amongst the voting population should just simply be
16 looked at with a tremendous amount of skepticism.

17 SEN. DAVIS: Are you aware in your work
18 on behalf of the Brennan Center, are you aware of any
19 empirical data -- exit polling, surveys or
20 otherwise -- in which people were asked whether their
21 appetite for voting indeed increased by virtue of the
22 passage of photo ID laws in the states in which
23 they're voting?

24 MR. SKAGGS: I am aware of one study in
25 particular on that subject. We've heard about it from

1 a couple of the folks that have testified here before
2 this me evening, and that's a study that was published
3 in the Harvard Law Review not long ago. And the
4 conclusion that that came to was that there was simply
5 no correlation, there was no increase in voting based
6 on any feelings of the possibility of fraud or the
7 possibility that fraud would be addressed by voter ID.

8 MR. DAVIS: Do you think it might be a
9 more valid analysis to compare states with and without
10 photo ID requirements over a period spanning several
11 election cycles in the same -- or the same national
12 election cycle in order to determine the impacts of
13 voter ID?

14 MR. SKAGGS: I think it would. And I
15 think -- I'll echo an observation made by Dr. Moore
16 earlier this evening which is that it's a shame that
17 the empirical data is not there to the extent it could
18 be. And I think studies of the sort that you've just
19 described, Senator, would be very helpful in that
20 regard.

21 The one thing I would add to the sort of
22 proposed research that you talked about would be
23 factors such as candidate campaign mobilization, the
24 number of resources that were poured into the states.
25 I think the more variables that you can plug into

1 these studies that look at issues that actually have
2 an impact on voters being mobilized, the more accurate
3 the data would be.

4 SEN. DAVIS: I want to ask you for a
5 moment about claims that are made that support the
6 argument for voter ID. I would like to hear your
7 thoughts on claims that are made by voter ID
8 supporters that suggest that thousands of dead people
9 or non-citizens are registering and possibly voting.

10 MR. SKAGGS: Well, we hear these sorts
11 of claims all the time. And what a detailed analysis
12 of these claims proves again and again and again is
13 that there is no "there" there. These are erroneous
14 reports. The biggest reason why we have these sorts
15 of claims and why they ultimately fail when they're
16 scrutinized is the data-matching that I talked about
17 earlier, the attempt to compare voter lists, list of
18 voters who cast ballots against lists of dead people
19 or felons, for example, that in many states are
20 disenfranchised.

21 And what we see again and again is that
22 initial data-matching comes up with huge numbers,
23 thousand of voters, and that when resources are
24 dedicated to actually going record-by-record and
25 case-by-case and match-by-match and investigating

1 this, it ends up that virtually all these fall away.

2 One of the most well-known examples is
3 an article in the Atlanta Journal-Constitution that
4 came out with a huge dramatic headline that over 5,000
5 dead voters had voted in Georgia over a number of
6 years. And the specific example that was cited in
7 that article was a gentleman by the name of Allen J.
8 Mandel, M-a-n-d-e-l, who was deceased and who the
9 article claimed someone had definitely voted in his
10 name.

11 An investigation was conducted and it
12 turned out there was actually an Allen J. Mandell,
13 M-a-n-d-e-l-l -- two l's as opposed to one -- who was
14 very much alive and well, and he was actually the
15 gentleman that cast a vote, eligible citizen, no
16 wrongdoing at all.

17 But these sorts of claims, this 5,000
18 number was latched onto by elected officials,
19 advocates, partisans, and was repeatedly trumpeted.
20 And, of course, once the careful analysis is done and
21 once each of these cases is looked at and it turns out
22 that, in fact, there really is no problem, oftentimes
23 those reports and those studies don't get as much air
24 play.

25 SEN. DAVIS: You've mentioned the

1 Indiana experience in your comments and in your
2 answers to my questions today. But even Appeals Judge
3 Posner, an outspoken conservative appointee, said in
4 his Opinion upholding the Indiana photo ID law -- and
5 I quote him -- "No doubt, most people who don't have
6 photo ID are low on the economic ladder and, thus, if
7 they do vote, are more likely to vote for Democratic
8 than Republican candidates. Thus, the new law injures
9 the Democratic Party by compelling the party to devote
10 resources to getting to the polls those of its
11 supporters who would otherwise be discouraged by the
12 new law from bothering to vote," end quote.

13 His comment seems to illustrate why
14 Republicans use voter fraud claims to justify vote
15 suppression activities that date back decades and that
16 continue today. Do you know of any evidence of
17 systematic voter fraud to contradict findings from
18 academic studies that suggests that the only real
19 reason for the photo ID push is to provide Republicans
20 a partisan advantage?

21 MR. SKAGGS: I don't. The answer would
22 be no. I don't pretend to understand why certain
23 folks would support these policies. There's
24 certainly some obvious explanations of the sort that
25 you just gave. But I think Judge Posner was actually

1 right in the selection that you read. I think where
2 he was wrong was when he went on later in the Opinion
3 to say, "And that's not a problem." That's where I
4 disagree with him.

5 And I don't disagree with Judge Posner,
6 because I think anything that hurts the Democrats
7 should be rejected. That's not why I disagree with
8 him. My fundamental disagreement is because there is
9 a certain cavalier attitude towards any sort of policy
10 that disenfranchises people as long as it's just a
11 small number of them. And I don't think 92 notes or
12 33 notes or 700 votes is an acceptable number of
13 voters to be disenfranchised, particularly when the
14 excuse for doing so just doesn't hold any water.

15 SEN. DAVIS: Thank you very much for
16 your testimony and your answer to my questions.

17 I have no more questions for this
18 witness, Mr. President.

19 SEN. DUNCAN: Thank you, Mr. Skaggs.
20 There are no other members queued up, so you are
21 excused. Thank you for your appearance here today.

22 MR. SKAGGS: Thank you, Mr. Chairman.

23 SEN. DUNCAN: The Chair calls Wes
24 Tailor.

25 Mr. Tailor, you have 10 minutes. Let me

1 introduce your written testimony first. I've got an
2 Exhibit 25, which is the written testimony of Robert
3 Simms. Is that --

4 MR. TAILOR: Yes, sir. That's our
5 Deputy Secretary of State.

6 SEN. DUNCAN: Okay. Would you
7 explain -- well, go ahead and state your name and who
8 you represent.

9 MR. TAILOR: Yes, sir. My name is Wes
10 Tailor. I am the Elections Director for the State of
11 Georgia, and I was appointed to that position by the
12 Secretary of State.

13 SEN. DUNCAN: And you have given us
14 Exhibit 23 -- or 25, rather -- as the written
15 testimony of Robert Simms, the Georgia Deputy
16 Secretary of State, before the United States Committee
17 on Rules and Administration. We'll submit that to the
18 record.

19 (Exhibit No. 25 marked and admitted)

20 **TESTIMONY BY ROBERT A. SIMMS (SUBMITTED BY WES TAILOR)**

21 MR. TAILOR: Thank you.

22 Well, thank you-all very much for having
23 me in the great State of Texas. I will try not to
24 take up too much of your time. Obviously, I can't,
25 since I only have 10 minutes. But I did want to

1 describe Georgia's experience with our photo ID law.
2 And, obviously, it is up to you as legislators in the
3 great State of Texas to decide whether that experience
4 in Georgia has application for the voters in Texas
5 while you consider this bill.

6 One of the things that you may want to
7 consider is that I am an actual elections
8 administrator. I have administered several elections
9 under a photo ID statute. In Georgia, prior to the
10 implementation of our photo ID law in August of 2007,
11 voters could use, actually much like this current
12 Texas bill, 17 forms of voter identification when they
13 were voting in person.

14 The current statute allows generally in
15 Georgia six forms of photo identification: A driver's
16 license, a U.S. passport, government employee photo
17 identification, a valid federal or state government
18 photo ID, a military photo ID or a tribal photo ID.

19 If a voter shows up at the polls, much
20 like has been discussed here, and they do not have one
21 of those appropriate forms of ID, they may cast a
22 provisional ballot and return within two days after
23 the election to verify their information or verify who
24 they are, at which point their ballot would be
25 counted.

1 And I'm going to take issue right here
2 with the previous testimony talking about provisional
3 ballots and the allowance of provisional ballots and
4 the failure of people to then either return to the
5 registrar's office, as disenfranchisement. That is
6 not disenfranchisement. Those people -- everyone in
7 Georgia is allowed the ability to cast a vote.

8 Now, with the provisional ballots, under
9 federal statute, however a provisional ballot is cast,
10 there is an opportunity to then verify the individual
11 or verify the information. That's true in Georgia.
12 Those people were not disenfranchised; they were given
13 every opportunity to have their vote count. Now, why
14 they didn't return, we don't know yet. That is true.
15 But to say it's only because that they couldn't get a
16 ride, we don't know. They could have not been the
17 people that they said they were when they arrived at
18 the polls, but we don't know that at this point.

19 Now, the entire State of Georgia has
20 been set as a Section 5 state, and DOJ did pre-clear
21 our current statute. I will note, by the way, that
22 DOJ did pre-clear the broader statute which is more
23 akin to the current Texas Senate Bill, back early on,
24 well before 2006.

25 But let me tell you about Georgia's

1 experience with the photo ID. The arguments that have
2 been raised are numerous, that in-person voter fraud
3 doesn't exist or it's not such a problem that you
4 should think to address it. Well, I can tell you, as
5 an elections official, that I take voter fraud very
6 seriously. I also take each and every person in
7 Georgia's ability to cast a vote very seriously. I
8 would equal and hold those two on equal footing.

9 And what we have found in the
10 administration of photo ID in Georgia is that it does
11 not disenfranchise voters, but it does serve as a true
12 barrier to voter fraud, an in-person voter fraud.
13 Another argument that I've heard is that it will place
14 an undue burden on however many people folks have come
15 up with. In the litigation in Georgia, it was
16 hundreds of thousands of individuals and you've heard,
17 and so I won't go over and belabor that after four
18 years of litigation, the most prominent lawyers in
19 Georgia, one being a former governor, failed to find
20 even one single individual who was unduly burdened by
21 Georgia's photo ID statute. We've conducted 15
22 elections with photo ID. Georgia voters have cast
23 more than nine and a half million ballots under photo
24 ID, without a single issue or problem.

25 Looking at the 2008 General Election, we

1 had, as has been stated, the highest turnout we've
2 ever seen, and it was about 700,000 more votes cast in
3 2008 than ever before in Georgia. By registration
4 deadline, we had 550,000 new voter registration
5 applications in 2008, as compared to 480,000 in 2004.

6 You heard that during the presidential
7 prejudices primary, we had more than one million
8 votes -- or I'm sorry -- 2.2 million votes cast in the
9 presidential preference primary, which was more than a
10 million than we had ever had cast in the presidential
11 preference primary before, with photo ID requirement
12 in place.

13 What's really interesting is that
14 100,000 more ballots were cast for the Democratic
15 candidates than for the Republican candidates. For
16 the General Election, Georgia has the option to mail
17 in ballots without a photo ID or to show up in person
18 with a photo ID. 92 percent of Georgians decided,
19 elected, chose to show up in person with a photo ID
20 when they had the choice not to do so.

21 Another argument I've heard today is
22 that photo ID requirements place an undue burden on
23 minority and elderly voters, and I've also heard that
24 it places an undue burden on female voters. Well,
25 I've heard all the reasons why you should discount the

1 statistics, but let me just give you what Georgia saw,
2 based on 2004 to 2008.

3 Hispanic Latino votes cast went up by
4 140 percent from 2004 to 2008 in Georgia, with photo
5 ID. Black votes, African-American votes went up by
6 42 percent. The white vote went up by 8 percent.
7 Those casting votes who were 65 and older went up by
8 24 percent. And 65 and older voters still make up the
9 single largest category of voters in the State of
10 Georgia.

11 With respect to the increase in voting
12 between male and female voters, male voters, the votes
13 cast increased by about 17 percent, and female voters
14 went up by 18 percent. So at least on the face of the
15 votes and the number of votes cast with photo ID and
16 without, there was no correlation with a suppression
17 of any votes.

18 The other argument I've heard, that
19 photo ID is designed to favor one party over another.
20 And we'll tell you that in Georgia, we do not register
21 by party. As I said, in the 2008 presidential
22 preference primary, almost 100,000 more ballots were
23 cast for the Democratic primary than the Republican
24 primary. In the General Election, Sen. McCain did
25 receive a majority of the votes for president.

1 However, Georgia's sitting Republican incumbent
2 senator was forced into a runoff with his Democratic
3 opponent very close behind in the vote totals.

4 At least from those figures, there does
5 not appear to be a favoritism of one party over
6 another with the photo ID requirement. I can tell you
7 that Georgia's experience statewide shows that common
8 sense voter ID requirements are needed and do not
9 unduly burden voters. The arguments against that have
10 been stated here by certain groups do not appear and
11 still do not have any basis in fact and are pure
12 hyperbole and empty rhetoric and are not seen by
13 actual elections administrators on the ground.

14 Thank you.

15 SEN. DUNCAN: Thank you, Mr. Tailor.
16 There are no members queued up for questions. I
17 appreciate your testimony.

18 MR. TAILOR: Thank you.

19 SEN. DUNCAN: The next witness will be
20 J. Gerald Hebert.

21 Mr. Hebert, if you will approach. And
22 do you have written testimony? You do?

23 And just for the record, Exhibit 26 is
24 the written testimony of J. Gerald Hebert and will be
25 submitted to the record.

1 (Exhibit No. 26 marked and admitted)

2 SEN. DUNCAN: Go ahead and state your
3 name and who you represent. And you have 10 minutes.

4 **TESTIMONY BY J. GERALD HEBERT**

5 MR. HEBERT: My name is Joe Hebert, and
6 I'm a voting rights attorney. I'm also Executive
7 Director and Director of Litigation at the campaign
8 legal center. Today I am here representing myself.

9 I've spent over 20 years at the U. S.
10 Department of Justice as a federal prosecutor of
11 voting rights cases. I've taught courses on voting
12 rights at Georgetown Law School and University of
13 Virginia, among other schools.

14 But I want to start my testimony today a
15 little different than most of the other witnesses.
16 I'm going to start by making clear what I think is
17 really going on here with the Texas voter ID bill.
18 You see, this is just the latest in a series of
19 measures taken by Texas Republicans in the state to
20 harm voters within their own state, particularly
21 minority voters being the real targets. And it was
22 just a few years ago you enacted a redistricting
23 bill --

24 (Applause from the gallery)

25 SEN. DUNCAN: (Raps gavel)

1 MR. HEBERT: -- that was aimed at --

2 SEN. DUNCAN: Just a minute, Mr. Hebert.

3 Any more outbursts, and the persons that
4 are participating in that will be asked to leave the
5 gallery. Thank you.

6 You can proceed.

7 MR. HEBERT: In 2003, there was a
8 redistricting bill that was needlessly passed that was
9 aimed at minimizing not only Democratic influence but
10 hurting minority voters. Republicans in the State of
11 Texas today, and particularly in the Senate, are using
12 their majority status to enact legislation that can't
13 be justified by urgency or need. Instead, it will
14 simply make it harder for hundreds of thousands
15 perhaps of Texans to vote.

16 They cast aside the bipartisan
17 legislative tradition or rule, the two-thirds rule, to
18 take up this issue so that they can ramrod the voter
19 ID bill down the throats of the minority. And they've
20 done so even though implementation of a photo ID bill
21 will cost the state millions of dollar. So you Texans
22 out there, that's where your tax dollars are going to
23 go, to defend the measure before the Department of
24 Justice and in the federal courts and then to
25 implement and approve -- and implement it and

1 administer it if it ever is approved.

2 Now, I realize that saying these raw
3 partisan politics is largely motivating this is a
4 pretty serious charge, and so I'm going to take a few
5 minutes to tell you on what I base them. First of
6 all, understand that voter ID bills are of recent
7 vintage and they've only been enacted in states where
8 Republicans control the entire process in the state,
9 they control the Governor's chair, the Senate and the
10 House. That's where this has come up recently, And
11 it's not by accident. It's being considered in Texas,
12 as it was in those other states, without policy
13 substance. There simply is no widespread organized or
14 even occasional voter impersonation fraud in Texas
15 that will be addressed by this bill.

16 Now, I have personal experience with
17 this in Texas, because I filed a lawsuit against Greg
18 Abbott and the Secretary of State challenging their
19 assertions that there was a voter fraud epidemic here
20 in the state. And guess what? There isn't. I've
21 also led Attorney General Abbott to admit that persons
22 that he prosecuted for what he called in various press
23 releases an epidemic of voter fraud -- and they were,
24 by the way, with one exception all elderly black and
25 Latino political activists, and all of them were

1 Democrats -- that they hadn't engaged in any fraud at
2 all whatsoever.

3 The particular type of voter fraud that
4 this legislation is purported to address, voter
5 impersonation, is virtually unheard of. There is
6 considerable evidence -- and you've heard it today --
7 that enacting a voter ID bill will create a series of
8 barriers that make it harder for senior citizens,
9 younger voters, poor people, people of color, women in
10 general, to exercise their right to vote.

11 Now, the fact is that most, if not all,
12 of these groups are growing as a percentage of Texas'
13 voting population, and most of them tend to vote
14 Democratic. So that skew tends to explain to me the
15 urgency of Republican leadership in pushing this bill.
16 This is about partisan politics and protecting
17 political power and marginalizing your opposition,
18 exactly what you did in the redistricting bill. And I
19 have personal experience with that as well, because I
20 was one of the lawyers who bought a suit against that
21 and took it to the Supreme Court where we did prove
22 that it discriminated against Latinos in South Texas.
23 That's what this is about.

24 Now, the Republican members of this
25 Senate and in the House, they can go ahead if they

1 want to and choose to use their majority status to
2 waste Texas' tax dollars of hard-working Texans during
3 the short legislative session in this way. That's
4 their choice. They have that power.

5 But it's important to realize that the
6 path being taken and the methods used by Republicans
7 have ramification that extend beyond politics. What's
8 at stake is much bigger than a Republican majority
9 imposing its will on a Democratic majority.

10 The path and method in enacting the
11 photo ID bill is the latest in a long series of
12 relentless attacks on minority voters by this state,
13 which is covered by the Voting Rights Act, because you
14 have a long history of denying minority people the
15 right to vote. That's a simple fact.

16 Now, Texas, along with other deep south
17 states, has a long dark history of using voting as a
18 way to keep people on the reservation. Let me give
19 you, however, more recent examples than ancient
20 history involving the office of your current Attorney
21 General who has used his office to manufacture false
22 claims of voter fraud.

23 Take, for example, this: He created a
24 training manual about main-in balloting to try to go
25 around and inform DAs about how to find voter fraud.

1 And on one of his PowerPoint slides, he said, "Hey,
2 they use certain stamps to mail their ballots, these
3 fraudulent people." And he had a big picture of the
4 stamp, a sickle cell anemia stamp featuring a
5 prominent African-American woman holding her baby.
6 Boy, that's a real subtle indicator, isn't it, of
7 voter fraud and who is committing it.

8 He sent investigators from the Attorney
9 General's office -- get this! -- to peep into the
10 bathroom window of my client, an elderly African-
11 American woman in Fort Worth, when she was coming out
12 of the shower. And they were there to harass her
13 about whether or not she had helped her neighbors
14 vote. What a terrible thing to do, help your
15 neighbors to vote if they're shut in and disabled
16 people.

17 The Attorney General here was asked to
18 intervene to help the Prairie View students in Waller
19 County. In three years he did nothing. Repeatedly
20 meetings were asked with the Attorney General to ask
21 him to come in and help them. It took -- get this! --
22 the Bush Justice Department to use Waller County, to
23 step in after two years of inaction by the Attorney
24 General and protect the African-American students at
25 the university. Ancient history? No. 2008.

1 Now, the cases that were brought against
2 elderly Latino and African-American women by
3 Mr. Abbott, in which he claimed were voter fraud, were
4 the following activities: They actually had the
5 audacity to go to their neighbors' homes, at the
6 neighbors' homes request, who are often very elderly
7 and disabled people, to pick up their mail-in ballot
8 that had already been sealed and drop it in the mail
9 to them.

10 Notice, I didn't say they marked the
11 ballot for them. Notice I didn't say that they
12 pressured the neighbor. They simply mailed a ballot,
13 and then they were prosecuted for vote fraud. Where
14 is the fraud? Kind of like the old commercial,
15 "Where's the beef?"

16 And when they stood up and filed a
17 lawsuit saying, "Hey, we weren't -- we didn't engage
18 in voter fraud," Greg Abbott's former Solicitor
19 General, Ted Cruz, put out a press release and said,
20 "Oh, none of their claims have any merit, because
21 they're all a bunch of criminals."

22 Just last week we find the Attorney
23 General's office failed to comply with a proper open
24 records request from Texas legislators who asked him
25 for records about voter impersonation fraud, the

1 so-called target of this bill.

2 And then there is a glaring example --
3 and it's detailed in my testimony -- where you had
4 voter fraud apparently committed in Highland Park, a
5 very rich areas of Dallas, Texas, where, by the way,
6 George Bush and Dick Cheney lived before they went in
7 the White House, where Republicans engaged in voter
8 fraud and the Attorney General was asked to prosecute
9 and investigate by the DA in Dallas, and he failed to
10 do so. Explain that lack of even-handedness.

11 Now, these recent actions by the
12 Attorney General should serve as an important warning
13 to those of you who are going to vote on this
14 legislation. This hearing is a sham, just like your
15 redistricting public hearings were a sham. You said
16 you wanted to listen to the voters, and 90 percent of
17 Texans said, "Don't do redistricting." Did you
18 listen? No. You were hell bent on enacting Tom
19 DeLay's dirty work, because you couldn't stand up to
20 him and pass the bill.

21 Let me say, since I have only a few
22 minutes left, one minute left to say this: I can
23 assure you that as a former Justice Department
24 official, all of the actions that I just described,
25 along with your procedural departures from the norm,

1 such as abolishing the two-thirds rule, not allowing
2 certain rules to be enforced, even though they're in
3 the Texas rules, as Sen. West said this morning, that
4 all of that will come back to haunt you, because those
5 are indicators under a decision called Arlington
6 Heights, in the Supreme Court that really what's going
7 on here is not about good government reform, this is a
8 measure that has as its root an illicit purpose. And
9 you-all ought to know a lot about that, because it's
10 been going on in Texas for a long time.

11 Thank you.

12 **QUESTIONS FROM SENATE FLOOR**

13 SEN. DUNCAN: The Chair recognizes
14 Sen. West.

15 SEN. WEST: Thank you very much,
16 Mr. Chairman.

17 Mr. Hebert, as it relates to
18 non-citizens, what about those who claim that
19 non-citizens are on the voters roll and will a voter
20 ID law for voting stop that?

21 MR. HEBERT: A photo ID bill will not
22 affect that whatsoever. Right now you don't have to
23 be a citizen to get a driver's license. Many people
24 who are non-citizens, if they end up on the rolls --
25 and this has been true in not only Texas, it's true in

1 other states -- that they go to get a driver's license
2 and there is a -- in many places, you automatically
3 get put on the voter registration rolls if you check a
4 box that says, "Do you want this to double as a voter
5 registration application?" So they end up being on
6 the rolls.

7 Now, there is no indication in most
8 states that these people ever vote. But if they do,
9 it's usually because someone has given them -- you
10 know, they've gone to the polls and they've been given
11 a registration card. But it happens so rarely. The
12 photo ID bill wouldn't affect that at all, because
13 they get a photo ID.

14 SEN. WEST: You know, there's been some
15 questions raised about whether you need a photo ID to
16 get on an airplane or cash a check. What is the
17 answer to that question?

18 MR. HEBERT: You do not need a photo ID
19 to get on an airplane in this country. In fact, the
20 Department of Homeland Security's TSA office has
21 regulations that they've issued about this. If you go
22 to the airport and you don't have your picture ID,
23 they will pull you aside, put you in a room, ask you a
24 series of questions, make you sign a statement, and
25 then you will get on the plane. In fact, I believe

1 Dr. Moore who testified earlier today did not have his
2 picture ID with him when he came down here, and he
3 went through that exact procedure.

4 SEN. WEST: No photo ID?

5 MR. HEBERT: Yes, no photo ID.

6 SEN. WEST: How does the legal --

7 MR. HEBERT: And he was who he said he
8 was, by the way, so he wasn't impersonating somebody
9 else.

10 SEN. WEST: Okay. How does the legal
11 standard that the Department of Justice will employ to
12 any Texas voter ID law differ from the legal standard
13 the Supreme Court used to decide the Indiana case?

14 MR. HEBERT: The Indiana case was a
15 constitutional challenge, what we call a facial
16 challenge to a statute. In a lawsuit like that -- it
17 didn't even involve race, by the way. I mean, we
18 haven't said that in all the debate today. But the
19 Indiana case, there was no allegations that the
20 Indiana bill violated the Voting Rights Act in the
21 Indiana case. Instead, it was a challenge that the
22 voter ID bill there burdened the fundamental right to
23 vote, in violation of the constitution.

24 It was challenged even before it went
25 into effect, so that's why I always find it amusing

1 that people quote the Supreme Court that say, "They
2 couldn't produce a single case." Well, of course.
3 They hadn't had an election yet by the time the case
4 was brought to trial and the decision was made.

5 So the legal standard there is that you
6 have to prove that it's an unconstitutional burden on
7 the right to vote, fundamental right to vote. It's a
8 very high burden, because the state is given
9 considerable latitude when it comes to regulating
10 elections and voting.

11 In the Department of Justice proceeding,
12 the total focus is on race and ethnicity, something
13 that wasn't at issue in Indiana when the case went to
14 the Supreme Court. There the state, as was reported
15 earlier, bears the burden of demonstrating that
16 enacting a photo ID bill will not lead to a
17 retrogressive effect from minority voters in the state
18 and is not being enacted with a discriminatory
19 purpose.

20 SEN. WEST: So the Indiana case is not
21 really applicable to Texas?

22 MR. HEBERT: Not really. When it comes
23 to the Section 5 pre-clearance process, it really has
24 very little, if any, relevance.

25 SEN. WEST: Okay. Now, what relevance

1 is it to obtaining Section 5 pre-clearance if the vast
2 majority of minority legislators vote against a
3 particular bill?

4 MR. HEBERT: Well, there is a Supreme
5 Court case on point now that's called Georgia vs.
6 Ashcroft where Georgia enacted a redistricting plan.
7 And virtually all but I believe one legislator voted
8 against the bill. And when the Legislature went for
9 pre-clearance, there were arguments made by
10 Republicans, actually, that the redistricting plan
11 violated the voting rights of minorities.

12 And the State of Georgia produced voting
13 records and statements from minority legislators
14 saying, "We support this redistricting plan. And the
15 Supreme Court, in fact, cited that as evidence that
16 there was not a retrogressive effect and that, in
17 fact, there was no discriminatory purpose.

18 SEN. WEST: Have you had a chance to
19 look at the draft of the bill that's being proposed?

20 MR. HEBERT: I have looked at it, yes.

21 SEN. WEST: In terms of direction for
22 this legislative body, can you kind of give us your
23 assessment of whether or not this, quote unquote,
24 voter ID bill is needed in the State of Texas?

25 MR. HEBERT: Well, I mean, I know that

1 there are no cases -- in fact, I believe the Attorney
2 General's Deputy Attorney General testified just last
3 year that there were no proven cases of voter
4 impersonation fraud that would be addressed by the
5 photo ID bill. That was testimony that Mr. Eric
6 Nichols gave last year. I was at that hearing, by the
7 way, and I brought actually his statement, the news
8 articles that quoted him.

9 So I know that that kind of a problem --
10 this is a bill in search of a problem and doesn't
11 really -- in my mind doesn't really address a lot of
12 what is really voter fraud in Texas, which are things
13 like voter intimidation of minorities -- that's voter
14 fraud -- minorities who are being denied the right to
15 vote, because they're being intimidated and harassed
16 by people. That's voter fraud, and that ought to be
17 the kind of measure that ought to be enacted by the
18 Texas Legislature.

19 SEN. WEST: All right. Thank you very
20 much.

21 SEN. DUNCAN: Sen. Wentworth.

22 SEN. WENTWORTH: Welcome to Texas,
23 Mr. Hebert.

24 MR. HEBERT: Thank you, Senator.

25 SEN. WENTWORTH: Welcome back, I should

1 say.

2 MR. HEBERT: Yes, sir.

3 SEN. WENTWORTH: I gathered from your
4 prepared remarks tonight you were critical and did not
5 approve of the Legislature's drawing of Congressional
6 districts in 2003?

7 MR. HEBERT: I did not. That's correct,
8 I did not approve of it.

9 SEN. WENTWORTH: Now, recognizing that
10 you don't live in Texas, you live in I guess either
11 Maryland or Virginia or Washington, D.C., you may not
12 know the answer to these questions and I don't expect
13 you to, but you might, because you're an expert in
14 redistricting matters and have represented folks in
15 redistricting matters in Texas.

16 Do you happen to know how many statewide
17 elected officials are in Texas?

18 MR. HEBERT: The total number I don't
19 know. I believe they're all Republicans.

20 SEN. WENTWORTH: There are 29, and
21 they're all Republicans and they've all been
22 Republicans for over a decade.

23 Do you remember offhand how many members
24 of Congress we had before the 2000 census?

25 MR. HEBERT: You had 30, I believe.

1 SEN. WENTWORTH: Yes, sir, we had 30.
2 Do you remember the partisan division of those 30?

3 MR. HEBERT: It was two-thirds Democrat
4 at least. 21/9 I believe.

5 SEN. WENTWORTH: It wasn't quite that
6 bad; it wasn't quite. It was 17 Democrats and 13
7 Republicans.

8 MR. HEBERT: Prior to 2000?

9 SEN. WENTWORTH: Yes, sir.

10 MR. HEBERT: Okay.

11 SEN. WENTWORTH: And as a result of the
12 2000 census, Texas had two new congressional districts
13 added. So we went from 30 to 32. And as a result of
14 the redistricting that was done by federal court in
15 2001 and the election, it became 17 Democrats to 15
16 Republicans --

17 MR. HEBERT: I remember that.

18 SEN. WENTWORTH: -- in a state that had
19 29 statewide elected Republicans. We elected George
20 Bush governor, we re-elected George Bush governor, and
21 this state voted for George Bush as President of the
22 United States. And, yet, this state, even after 2002,
23 was still sending a Democratic majority congressional
24 delegation to Washington D.C., to fight President
25 Bush. And it didn't seem to those of us in the

1 majority here that that was fair. And that,
2 Mr. Hebert, is why we re-drew the lines in 2003.

3 MR. HEBERT: Do you want me to comment
4 on that or are you --

5 SEN. WENTWORTH: Be pleased to have you
6 comment on it, yes, sir.

7 MR. HEBERT: I would just make two
8 points, Sen. Wentworth. One is that it is true that
9 Democrats controlled 17 of 32, as of 2003. But in
10 probably five of the districts that Democrats held --
11 for example, Ralph Hall, Max Sandlin, Jim Turner,
12 Charlie Stenholm, all Democrats -- in those districts,
13 the Republicans were winning. The statewide office-
14 holders you mentioned were carrying those districts,
15 including George Bush, as I recall.

16 So the people who were actually voting
17 in those districts, those five districts or so, were
18 actually splitting their tickets and maybe voting for
19 Republicans at the top of the ticket. But then when
20 it came to the congressional district, they liked the
21 fact that maybe Charlie Stenholm did support George
22 Bush a lot of the times, or Ralph Hall did, so they
23 ended up splitting their vote.

24 So even though it was 17 Democrats,
25 really the way the districts were drawn to my mind was

1 really, a vast majority of them were drawn to skew in
2 favor of the Republicans. That is to say that they
3 roughly equated with the Republican share of the vote.

4 The second point I would make is that --
5 and a lot of Texans don't know this -- but as a result
6 of the redistricting in 2003, it is true that all the
7 people I just mentioned, except for Ralph Hall --
8 and I would add Martin Frost to the list -- all left
9 Congress.

10 There was a huge amount of tenure in
11 those people, and power in Washington is given out on
12 the basis of how long you've been there. So as a
13 result, Martin Frost was bounced out of Congress by
14 the map when he ran. Charlie Stenholm was. Martin
15 Frost would be Chairman of the Rules Committee today,
16 because Democrats control the House. Charlie
17 Stenholm would be Chairman of the Agriculture
18 Committee today, and Jim Turner would be Chairman of
19 the Homeland Security committee, very important
20 committees in Congress, all of whom are now gone
21 because of the redistricting that was done here in
22 2003. So it really ultimately -- and I know you
23 Texans don't really probably look on New York very
24 favorably, but the Rules Committee, that's now
25 headed by somebody from New York instead of somebody

1 from Texas, as a result of just what I saw was a
2 partisan power grab in 2003. That would be my answer.

3 SEN. WENTWORTH: Well, let me give you a
4 little more history about Texas redistricting when
5 Democrats controlled the redistricting process. In
6 1971 when we had 25 members of Congress, 22 were
7 Democrats and only three were Republicans. And the
8 Democratic majority, after the 1970 census, looked at
9 those three Republicans and said, "How in the world do
10 we allow three Republicans to be elected from Texas?"

11 So they sent us out to eliminate those
12 three Republicans. The three back then were George
13 Bush from Houston, Jim Collins from Dallas and Bob
14 Price from Pampa. And as they were drawing the lines,
15 they realized too many Texans in Houston were voting
16 Republican, so they couldn't get rid of George Bush.
17 And they realized too many Texans were voting
18 Republican in Dallas and they couldn't get rid of Jim
19 Collins.

20 But they looked out to the Panhandle and
21 realized that Bob Price from Pampa had his
22 congressional district right next to Wichita Falls,
23 which had as its congressman a Democrat, Graham
24 Purcell, who chaired the House Agriculture Committee.
25 And so the Democratic majority in the Legislature

1 decided that those farmers and ranchers in West Texas
2 would vote for the Chairman of the House Ag Committee,
3 so they paired, intentionally paired those two
4 congressmen to run against each other.

5 But the voters got to vote, and they
6 voted for Bob Price and defeated the Chairman of the
7 House Agriculture Committee. Thirty years later when
8 my party was in control, one of the congressmen that
9 you failed to mention was targeted for defeat, but he
10 wasn't defeated. Chet Edwards from Waco was reelected
11 even though he was supposed to lose.

12 So, fortunately, voters had the final
13 say. And in my judgment, both parties have been
14 guilty of doing things that they probably shouldn't
15 have been doing.

16 I appreciate you being here.

17 MR. HEBERT: Thank you. Thank you,
18 Senator.

19 SEN. DUNCAN: Senator Hegar.

20 SEN. HEGAR: Thank you, Mr. Chairman.

21 Thank you, Mr. Hebert, for being here.
22 I can tell you're very passionate, and definitely we
23 appreciate that. So I appreciate you being here and
24 stating everything that you have.

25 I had just a couple of questions as I

1 was listening to your testimony. One, I was curious
2 on the issue of voter fraud allegations in Highland
3 Park that you mentioned. And I just wanted to make
4 sure that you were aware that Craig Watkins, the
5 Criminal District Attorney, sent a letter to our
6 Attorney General on March 14th of '07, formally
7 thanking for the investigation, yet also declining to
8 pursue any prosecution in that case. And I just
9 wanted to make sure that you were obviously aware of
10 that; so, therefore, the decision was back in the
11 local jurisdiction not to pursue that prosecution.

12 And if you would like to comment on
13 that, please.

14 MR. HEBERT: I am aware that the
15 District Attorney did decline himself to do it.
16 Oftentimes when a local DA makes a decision like that,
17 it's not based, obviously, on whether or not he or she
18 thinks there is voter fraud that has taken place. But
19 in any event, you know, they often defer to the
20 Attorney General who has far greater resources for
21 prosecuting such cases than the locals do.

22 I would have to talk to Mr. Watkins and
23 find out precisely what reasons he gave.

24 SEN. HEGAR: Right. And I just wanted
25 to make sure that we're all able to understand that

1 there was decisionmaking going on in the local
2 jurisdiction as to how to pursue this matter as well,
3 so it's not just a one-sided street, and make sure
4 that everybody knows that. And hopefully we can
5 figure out some further discussions on that, because I
6 don't know the exact facts on it either.

7 Another thing I was curious, you
8 mentioned, I guess it was your client, with the window
9 of the bathroom. Now, I've heard that story before
10 and so I wanted some clarification on that, because
11 since that was your client, you can obviously be the
12 person to tell me this, since I've heard this story
13 before.

14 This situation -- and I wanted to make
15 sure this is the right one -- where people come to the
16 door but the home of the front door is also adjacent
17 to the window. The window is right immediately next
18 door to the door. And so, therefore, when anybody is
19 standing at the front door, the lady was going to see
20 them outside her bathroom window, because it's
21 immediately adjacent to the door. And so somebody was
22 not necessarily going around the fence, over the
23 fence, back through the back of the yard.

24 MR. HEBERT: Well, they were --

25 SEN. HEGAR: Is that the structure?

1 I've heard that story before, and I just wanted to
2 make sure, since you were here, I could find out the
3 real facts.

4 MR. HEBERT: Well, you've got a pretty
5 good handle on it, but let me just give you a little
6 bit more --

7 SEN. HEGAR: Please; please.

8 MR. HEBERT: -- facts. Two
9 investigators come up from the Attorney General's
10 office to interview Gloria Meeks, elderly African-
11 American woman. She's in the shower. And as I recall
12 her home -- and I haven't been there in a number of
13 years now -- but you walked up to the front door which
14 is, say, right in front of you here. On the porch,
15 down a little bit down from there is a window that
16 does go into the bathroom, and the investigators went
17 into the window first. They didn't knock on the door
18 first; they went into the window first, which just
19 struck me as pretty unusual, because there was
20 actually somebody there in her living room waiting to
21 drive her to the doctor. And when --

22 SEN. HEGAR: How far is the window from
23 the front door?

24 MR. HEBERT: Several feet --

25 SEN. HEGAR: Okay.

1 MR. HEBERT: -- a couple of feet.

2 SEN. HEGAR: Okay.

3 MR. HEBERT: But the guest, who was her
4 driver taking her -- you know, giving her a lift to
5 the doctor, I think it was, heard her yell and scream
6 that there was somebody looking at her while she was
7 getting out of the shower. And it turns out it was
8 the Attorney General's investigator.

9 SEN. HEGAR: You know, I would probably
10 scream, too, if y'all were on either side of the
11 window, I can imagine. I just wanted to make sure
12 everybody understood, if I heard the story correctly.
13 It was very close proximity, and I don't know how
14 anybody walked in the yard.

15 MR. HEBERT: Well, yes.

16 SEN. HEGAR: Obviously, I can understand
17 how that happened. And it would disturb me very much
18 so if someone would go around to the back of the house
19 and peep in windows, which is extremely a long ways
20 off. And I just wanted to make sure we understood the
21 context.

22 MR. HEBERT: Well, the explanation by
23 the investigators was almost as bad as the offense,
24 because when she protested to them, they said, "Oh,
25 I'm sorry. We thought we were looking in your kitchen

1 window." So I don't know that investigators --

2 SEN. HEGAR: I imagine they figured out
3 pretty quickly that wasn't a kitchen window.

4 MR. HEBERT: Yes, they did.

5 SEN. HEGAR: At least I hope so.

6 MR. HEBERT: I think the door is the
7 best place to start.

8 SEN. HEGAR: Let me ask, if you don't
9 mind, allegations that are sent to the Attorney
10 General for prosecution -- in other words, they don't
11 go out and seek prosecutions; people send that to
12 them -- and I was curious, you had mentioned about the
13 lawsuit that you had against the Attorney General, and
14 I was curious. How did that end?

15 MR. HEBERT: We ended up filing a
16 stipulated dismissal where the Attorney General agreed
17 to modify his prosecution policies in how he would
18 prosecute cases, particularly cases where the only
19 offense was the hyper-technical violation, if you
20 will, of failing to sign the mail-in envelope --

21 SEN. HEGAR: Okay.

22 MR. HEBERT: -- which was really
23 important, because that's what most of our clients
24 have been investigated or prosecuted for.

25 SEN. HEGAR: And so there was something

1 entered into the record at the court, and it actually
2 did not go to trial, but there was some settlement
3 prior to, and I guess you had prayer for five or six
4 different issues for relief. But it was really just
5 an issue put into the record for this one narrow
6 aspect that you were asking for. Is that correct?

7 MR. HEBERT: Right. All the rest of the
8 case we agreed to dismiss our challenges -- similar to
9 Indiana, challenges to the fundamental right to vote
10 of various mail-in ballot --

11 SEN. HEGAR: Was there an admission on
12 the that the state was violating some statute?

13 MR. HEBERT: No, no.

14 SEN. HEGAR: Okay.

15 MR. HEBERT: If you're going to settle a
16 case, you're not going to make the other side -- you
17 know, let you rub their nose in anything.

18 SEN. HEGAR: Okay. Well, let's hope
19 not, but sometimes those things happen. So anyway,
20 everybody just walked away, and there were some
21 changes, technical changes to the manual and that was
22 the end of that case?

23 MR. HEBERT: Well, they agreed to
24 redesign the ballot envelope for the mail-in ballots,
25 because the problem was that, as you probably know, in

1 a mail-in ballot, there was no place for a person who
2 simply mailed the ballot, to sign it. You could sign
3 it if you were a witness and you could sign it if you
4 provided assistance. But there was no place, if you
5 simply mailed it.

6 So we agreed to work with the SOS to
7 modify that and also to change one other procedure in
8 Texas, and talked with them about, you know, better
9 ways to do that.

10 SEN. HEGAR: Okay. Well, good. I just
11 wanted to make sure I had that. And then one other
12 thing, since you brought up Waller County, and Waller
13 County is a little near and dear to me, since I'm a
14 lifelong resident of Waller County. And I wanted to
15 make sure that I understood exactly what you're
16 talking about when you were talking about Waller
17 County, if that was in regards to voter eligibility of
18 students at Prairie View campus several years back and
19 to make sure that -- I think Sen. Ellis had asked for
20 back then in maybe '04, if I remember correctly, for
21 some kind of statement to clearly state from the
22 Attorney General what the definition of the law was
23 and that people who reside in a county, intend to
24 reside there, they do reside there, they're eligible
25 to vote. And that was clearly demonstrated in the

1 Opinion that was given to Sen. Ellis at that time. Is
2 that the situation that you were talking about?

3 MR. HEBERT: The situation in Waller
4 County for Prairie View students has been going on, as
5 you correctly point out --

6 SEN. HEGAR: Trust me. I've lived there
7 all my life.

8 MR. HEBERT: Okay. -- at least since
9 2004. The issue that I became involved in, and I
10 represented several of the Prairie View students, was
11 last year where a number of them were being denied the
12 right to become deputy registrars, and they were being
13 denied to register voters without certain burdens
14 being put on them, like limits of how many
15 applications and so on.

16 And when we went to the Justice
17 Department, as a former official of the Justice
18 Department, I was able to go to the federal
19 prosecutors and say, "This is a violation of their
20 fundamental rights here, and it seems to be race-
21 based." And the Justice Department, to their
22 credit -- you know, I didn't give the Bush
23 Administration much credit for prosecuting voting
24 rights cases on behalf of African-Americans -- but
25 they stepped up and Waller County signed a

1 comprehensive consent judgment in --

2 SEN. HEGAR: Very comprehensive.

3 MR. HEBERT: -- admitting violations.

4 And --

5 SEN. HEGAR: Well, I think the issue was
6 expanding the number of voting locations in the county
7 and trying to make sure everybody was tended to in
8 dealing with those issues.

9 MR. HEBERT: That was one issue. But I
10 think the remedy actually also extended to ensuring
11 that they would go on campus, the registration
12 officials --

13 SEN. HEGAR: Correct; correct.

14 MR. HEBERT: -- and talk --

15 SEN. HEGAR: Correct; correct.

16 MR. HEBERT: -- more with the students
17 rather than putting barriers up.

18 SEN. HEGAR: Correct; correct. And I
19 can just say this: If there is anything dealing with
20 the people that I represent in any of the district --
21 and I can tell you, especially with Waller County -- I
22 would appreciate, if you don't mind, calling me,
23 because I will get involved in any form or fashion,
24 because I want to make sure we don't have any issues
25 in the county whatsoever. So you have my pledge on

1 that.

2 MR. HEBERT: Thank you.

3 SEN. HEGAR: Thank you very much.

4 MR. HEBERT: Thank you, Senator.

5 SEN. DUNCAN: The Chair recognizes
6 Sen. Shapleigh.

7 SEN. SHAPLEIGH: Thank you, Mr. Chair.

8 Mr. Hebert, we've discussed since the
9 evening started the summary of the Attorney General's
10 investigation and prosecution of some of these cases
11 which he characterized in his March press release as
12 an "epidemic of fraud." Can you give us an overview
13 of how many cases were brought, how many were actually
14 indicted and who actually was involved in the
15 indictments?

16 MR. HEBERT: Well, there have been about
17 30 cases brought, as I understand it, by the Attorney
18 General over the last few years since he launched this
19 voter fraud project initiative, about 30 cases. My
20 recollection is, there were roughly 50 people involved
21 in these cases. I may have that part wrong, but
22 that's sticking in my mind. For the most part, they
23 were involving mail-in balloting, these 30
24 case. They were not cases -- and not a single
25 instance that I can remember involved voted

1 impersonation of somebody pretending, at the polls, to
2 be somebody else.

3 SEN. SHAPLEIGH: How many of these
4 individuals that were indicted were minorities?

5 MR. HEBERT: I don't really have a hard
6 figure on that. What I do know is that of the people
7 who were prosecuted for simply mailing the ballot of
8 other people, there were I believe 13 of those, and 12
9 of them were Latinos or Hispanics or African-
10 Americans, and all 13 were Democrats. By and large, I
11 don't know of any Republicans in those 30 cases that
12 have been defendants or indictees.

13 SEN. SHAPLEIGH: Now, these names I
14 think people here on this floor know, or some of us.
15 Willie Ray, who I think lives in Sen. Eltife's
16 district.

17 MR. HEBERT: Willie Ray was my client.

18 SEN. SHAPLEIGH: City Councilwoman, 69
19 years old, African-American from Texarkana. Walter
20 Hinojosa, retired school teacher and labor organizer
21 from here in Austin. What was the crime of these
22 individuals? What were they charged with?

23 MR. HEBERT: Well, Mr. Hinojosa was
24 never charged with a crime. He was a plaintiff in the
25 lawsuit, and he was one of my clients.

1 Ms. Ray was charged with mailing --
2 possessing ballots of other people. And what was
3 described in the case, the indictment, and what was
4 described in our lawsuit was that she had gone to
5 several shut-ins and taken their ballots and dropped
6 them in the mail for them, and sometimes put a stamp
7 on it, because they didn't have the money for a stamp.

8 SEN. SHAPLEIGH: And so what's the
9 alleged violation of the law in that act?

10 MR. HEBERT: Possessing the ballot of
11 another person and not putting your name on the
12 carrier envelope.

13 SEN. SHAPLEIGH: And that was what she
14 was prosecuted for?

15 MR. HEBERT: That's correct.

16 SEN. SHAPLEIGH: Thank you.

17 SEN. DUNCAN: Sen. Williams.

18 SEN. WILLIAMS: Thank you, Mr. Chairman.
19 Is it Mr. "A-bear" or Mr. "He-bert"?

20 MR. HEBERT: In Louisiana it's "A-bear."
21 In Texas it's "He-bert."

22 SEN. WILLIAMS: Well, we're in Texas, so
23 you'll be "He-bert" then, I guess, although I have
24 some "A-bears" in my district and it's in Texas. So I
25 just wanted to be sure I had it right.

1 Mr. Hebert, I would like to go back to
2 the Texas redistricting, because my recollection is
3 that you represented the Democrats when we did the
4 2003 congressional redistricting. Is my memory
5 correct about that?

6 MR. HEBERT: That is correct.

7 SEN. WILLIAMS: And would it be fair to
8 say that in the -- I'm not an attorney. So, I mean,
9 I'm going to kind of try to summarize this in
10 non-legal language. But my recollection is that the
11 basic argument you had was that it was
12 unconstitutional for us to draw a map that reflected
13 the majority voting patterns that Sen. Wentworth
14 referenced, that we had to protect those incumbent
15 Democrats. Is that the gist of the argument that you
16 had, it was unconstitutional, what we were trying to
17 do to redraw this map so that it reflected the
18 majority will of the state?

19 MR. HEBERT: No, that was not the claim.

20 SEN. WILLIAMS: What was it, then?

21 MR. HEBERT: We had a partisan
22 gerrymandering claim as one of the claims in the
23 lawsuit, which was the allegation that a mid-decade
24 redistricting that was being undertaken solely for the
25 purpose of achieving partisan gain -- that is, to

1 replace Democratic officeholders with Republican
2 officeholders in some districts -- that that was a
3 violation of the 14th Amendment's prohibition on
4 partisan gerrymandering.

5 SEN. WILLIAMS: And I think we're saying
6 the same thing. You're just phrasing it a little
7 differently than I would. And then in Pennsylvania,
8 you also represented the Democrats up there. But
9 wasn't the argument in Pennsylvania that it was
10 unconstitutional to have a congressional map that
11 didn't reflect the will of the majority there?

12 MR. HEBERT: No. First, I did not
13 represent the plaintiffs in the Pennsylvania case. I
14 was not involved in that lawsuit as one of the
15 attorneys. The claim there was a similar partisan
16 gerrymandering claim, but it did not include the
17 mid-decade aspect of it, which we in Texas took the
18 position that when you do redistricting in mid-decade
19 and you're replacing a perfectly valid map with
20 another map, that that creates a presumption that
21 you're doing it for partisan purposes, because why
22 else would you do redistricting twice? Most
23 legislatures don't like to even do it once.

24 SEN. WILLIAMS: And you mentioned
25 earlier your association with Martin Frost. Have you

1 represented him? Are you friend with him? Can you
2 tell me a little bit more about what your relationship
3 with him is?

4 MR. HEBERT: Martin Frost is a former
5 client of mine. I would consider Martin Frost a
6 friend. I went to his wife's funeral two years ago.
7 I don't socialize with Martin Frost.

8 SEN. WILLIAMS: I'm sorry. Could you
9 repeat -- I missed part of what you said. I think you
10 said he was a client of yours. And what did you say
11 after that?

12 MR. HEBERT: He was a former client of
13 mine.

14 SEN. WILLIAMS: I see.

15 MR. HEBERT: I said I would consider him
16 a friend, but I don't socialize with him. I haven't
17 seen him in a couple of years, probably in person.
18 And I think the last time I saw him was when I
19 attended -- I stand corrected. I saw him about two
20 months ago at a meeting at a law firm. But I think
21 the time before that was at his wife's funeral that I
22 attended.

23 SEN. WILLIAMS: And what about Eddie
24 Bernice Johnson, the African-American congresswoman,
25 have you ever represented her?

1 MR. HEBERT: I have represented her in
2 the past, yes.

3 SEN. WILLIAMS: Okay. And during a
4 redistricting trial, isn't it true that she pointed
5 you out in open court from the witness stand and said
6 that you had been her attorney and that you had lied
7 to her and that you had stabbed her in the back and
8 that you had double-crossed her when she was your
9 client, because you wanted to curry favor with Martin
10 Frost and the Anglo Democrats with more political
11 power? Did that happen?

12 MR. HEBERT: She did make some
13 accusations in open court about me. I don't remember
14 that precise language. I thought, frankly, that she
15 made some of those allegations against Martin Frost.

16 SEN. WILLIAMS: So are you saying she
17 was lying?

18 MR. HEBERT: I will tell you that I did
19 not -- I never have lied to any client, including
20 Eddie Bernice --

21 SEN. WILLIAMS: That's not what I asked
22 you. I ask you, was she lying?

23 MR. HEBERT: If she said that I lied to
24 her, then she was not telling the truth.

25 SEN. WILLIAMS: Okay. And then one last

1 thing. In 2003, is it true, the story that I've
2 heard, that we've got -- that you were caught on tape
3 stealing maps from the redistricting room? Couldn't
4 you be disbarred for that kind of activity?

5 MR. HEBERT: I will answer the second
6 part first. Yes, you could be disbarred for that
7 activity. And I never stole any maps. I was never --

8 SEN. WILLIAMS: Well, I understand that
9 there is actually a videotape of you taking maps from
10 the redistricting room. Is that not -- that's not
11 true? Those videotapes don't exist?

12 MR. HEBERT: That is not true. I have
13 never seen such a tape, but I never took any maps from
14 any redistricting room.

15 SEN. WILLIAMS: Okay. Thank you.

16 SEN. DUNCAN: Members, it's 12 o'clock,
17 and the Court Reporter has been serving us well since
18 about 12:30. And we have a relief coming in at 12:00.
19 She's been going for two and a half hours straight
20 now. And so I'm going to --

21 SEN. LUCIO: Mr. President?

22 SEN. DUNCAN: -- ask the Committee --
23 Sen. Lucio?

24 SEN. LUCIO: I had asked you earlier --
25 I do have with me the correspondence from my Senate

1 district, from the District Attorney there from
2 Hidalgo County. And I would ask at this time to be
3 able to present it to you and to each member of the
4 Committee of the Whole. It's addressed to the
5 Committee of the Whole.

6 SEN. DUNCAN: Well, certainly. Bring it
7 down and we will put an exhibit number on it. And it
8 will be Exhibit No. 27, and it's dated today. Is that
9 correct?

10 SEN. LUCIO: Yes, it's dated -- no.
11 Actually, it's dated March the 6th.

12 SEN. DUNCAN: Okay. And it's from whom?

13 SEN. LUCIO: It is from Rene Guerra,
14 Criminal District Attorney, Hidalgo County, Texas.

15 SEN. DUNCAN: All right. If you'll
16 bring that down, we'll submit that into the record as
17 Exhibit No. 27.

18 (Exhibit No. 27 marked and admitted)

19 SEN. LUCIO: Thank you, Mr. President,
20 and thank you, members.

21 SEN. DUNCAN: And members, with that, we
22 will take a 10-minute -- we'll stand at ease for 10
23 minutes, until 12:10 a.m., to give our court reporter
24 a break and I think do a transition there.

25 (Recess: 12:00 midnight to 12:17 a.m.)

C E R T I F I C A T E

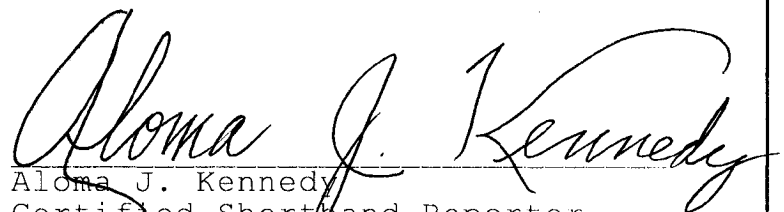
STATE OF TEXAS)

COUNTY OF TRAVIS)

I, Aloma J. Kennedy, a Certified
Shorthand Reporter in and for the State of Texas, do
hereby certify that the above-mentioned matter
occurred as hereinbefore set out.

I FURTHER CERTIFY THAT the proceedings
of such were reported by me or under my supervision,
later reduced to typewritten form under my supervision
and control and that the foregoing pages are a full,
true and correct transcription of the original notes.

IN WITNESS WHEREOF, I have hereunto set
my hand and seal this 25th day of March 2009.



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TRANSCRIPT OF PROCEEDINGS BEFORE
THE SENATE OF THE STATE OF TEXAS
EIGHTY-FIRST LEGISLATURE
(COMMITTEE OF THE WHOLE SENATE)
AUSTIN, TEXAS

IN RE: §
§
CONSIDERATION OF §
SENATE BILL 362 §

COMMITTEE OF THE WHOLE SENATE

WEDNESDAY, MARCH 11, 2009

BE IT REMEMBERED THAT AT 12:17 a.m., on
Wednesday, the 11th day of March 2009, the above-
entitled matter continued at the Texas State Capitol
Senate Chamber, Austin, Texas, before the Committee of
the Whole Senate; and the following proceedings were
reported by Kim Pence, a Certified Shorthand Reporter
of:

VOLUME 2

PAGES 481 - 870

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1 P R O C E E D I N G S

2 WEDNESDAY, MARCH 11, 2009

3 (12:17 a.m.)

4 SEN. DUNCAN: The Committee of the Whole
5 will come back to order. Members, we -- our very
6 capable court reporter, Ms. Kennedy is -- we're doing
7 a transition, and we let her have the rest of the
8 night off.

9 And we have Kim Pence who is with us,
10 who will continue taking our testimony, and if --
11 we'll continue to observe that so that she can get a
12 good record.

13 The next person on the queue is
14 Sen. Zaffirini. Sen. Zaffirini, you are recognized.

15 SEN. ZAFFIRINI: Thank you,
16 Mr. President. And first, could we recognize the
17 court reporter who has been with us for 12 hours? She
18 certainly does deserve a round of applause.

19 (Applause)

20 SEN. ZAFFIRINI: Thank you.

21 **QUESTIONS FROM SENATE FLOOR (CONTINUED)**

22 SEN. ZAFFIRINI: Mr. Hebert, I know that
23 you have read the bill. Have you also read the fiscal
24 note?

25 MR. HEBERT: Yes, I have.

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1 SEN. ZAFFIRINI: And did you see that it
2 says that there would be no fiscal implications to the
3 State if this bill were passed?

4 MR. HEBERT: I did see that.

5 SEN. ZAFFIRINI: Do you believe that
6 fiscal note?

7 MR. HEBERT: While I accept it at face
8 value, I think it's preposterous.

9 SEN. ZAFFIRINI: Do you -- why do you
10 believe that that -- that if we pass the lot it will
11 cost the State millions of dollars, according to your
12 testimony?

13 MR. HEBERT: Well, I think it will cost
14 money because notwithstanding the fact there may some
15 line item in the Secretary of State's budget, I can't
16 believe that there's a line item that would cover the
17 cost of seeking pre-clearance and gathering all of the
18 data necessary, all the staff time to do that; and
19 then to go to the Justice Department, which is going
20 to have a very skeptical eye about this bill.
21 Remember, they recommended -- the career staff
22 recommended that the Georgia map be blocked. And if
23 you read their memo, which is now a matter of public
24 record, there was -- I think there was like 55
25 single-spaced pages of all of the data that they

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1 forced the State of Georgia to come up with. And even
2 in the end of having them produce all that data,
3 Georgia still couldn't get pre-clearance from the
4 career people.

5 The process as it turns out, we now
6 know, is somewhat corrupt there, but I think the Texas
7 bill could very well suffer the same effects, not to
8 mention all the time, of course, the State is taking
9 to enact the bill; and then, of course, ultimately if
10 it does get approved, to defend it in court for the
11 inevitable legal challenge that will follow; and then,
12 of course, administering and implementing the bill at
13 the local level, it requires extensive training of
14 local Election Officials to ensure that they know how
15 to administer a very complicated set of identification
16 provisions.

17 SEN. ZAFFIRINI: And that is on Page 3
18 of your written testimony. You wrote "though
19 implementation of a photo ID bill will cost the State
20 of Texas millions of dollars to defend the measure
21 before the Department of Justice and in federal
22 courts, and then to implement and administer it if
23 ever approved." What do you think it would cost the
24 State to defend this lawsuit?

25 MR. HEBERT: Well, to defend the lawsuit

1 if one is challenged and assuming the bill is enacted
2 exactly as it appears in the bill pending before you,
3 you know, to bring such a lawsuit and to challenge it,
4 I can tell you on the plaintiff's side costs a quarter
5 of a million dollars, at least on the plaintiff's
6 side. I suspect the defendants usually spend more.
7 So I would say, you know -- and it also depends
8 whether there's an appeal, which usually there is.
9 The more appeals there are, the more it costs. So
10 usually litigation of this nature costs like, you
11 know, probably half a million dollars is what -- is
12 what the bill is.

13 SEN. ZAFFIRINI: Okay. Thank you. On
14 Page 4 of your written testimony, you write that
15 "There is considerable evidence, however, that
16 enacting a Voter Photo ID bill will create a series of
17 barriers making it harder for senior citizens, younger
18 voters, poor people, people of color, and women in
19 general to exercise their right to vote." Precisely
20 what barriers are you talking about?

21 MR. HEBERT: Well, as Ms. Wang testified
22 earlier, you and I may have IDs in our pockets, in our
23 purses, but poor people don't oftentimes have those.
24 And the burdens and barriers that they face are that
25 they have -- if they don't have a photo ID now, and we

1 now know that there are thousands of Texans who vote
2 and don't have a photo ID, that they're going to now
3 presumably have to get one or make sure that they
4 carry around these two other methods of identification
5 with them. So that's -- you know, we're putting up --
6 we're putting up conditions on people exercising the
7 fundamental right to vote. We're putting the burden
8 on them to do more than just show up at the polls and
9 vote.

10 You know, I heard earlier, for example,
11 I think it was Sen. Fraser say, you know, to
12 Sen. Davis, you know, when Wendy Davis goes the polls
13 and votes, I want to make sure that, you know, it is
14 Wendy Davis. And the fact is that we don't really
15 have any examples right now of where somebody is
16 showing up pretending to be Wendy Davis who is not
17 Wendy Davis.

18 And so when you don't have a lot of
19 those situations happening, forcing people to have a
20 photo ID when it really isn't going to accomplish --
21 the kind of alleged fraud that exists, it really, I
22 think, ends up putting people in a burdensome
23 situation where they have to then go out and do
24 something to get the right documentation.

25 And I think that -- you know, in

1 Georgia, I mean, there were -- I believe I saw a
2 statistic in the Houston Chronicle this morning that
3 there were roughly -- I think it was like a little
4 over a thousand, I think it was 1100 voters who had to
5 vote a provisional ballot in Georgia in 2008 because
6 they didn't have the requisite photo ID. And of that
7 number, I believe only 300 came back after the
8 election and produced within 48 hours the necessary
9 documentation.

10 Once the election is over, there's not
11 as much incentive for people to come back and do
12 whatever it is they need to do to validate their vote.

13 SEN. ZAFFIRINI: Thank you. Isn't it
14 interesting that every minority member of the Texas
15 Senate, every Hispanic and the two African-Americans,
16 oppose the effort to re-redistrict, as I'd like to
17 call it, and today every minority member of the Texas
18 Senate, the two African-Americans and every
19 Hispanic-American in the Texas Senate, oppose this
20 bill. Some coincidence, wouldn't you say?

21 MR. HEBERT: I would say not very
22 coincidental at all actually. I think it's
23 understandable given the ultimate impacts of what I
24 see the two bills having.

25 SEN. ZAFFIRINI: Mr. Hebert, you heard

1 my question to Sen. Fraser asking him why he included
2 documentation of a sex change as proof of
3 identification. He said in response that he would
4 punt to the House author of the bill considered in
5 2007. Can you explain to us why that language would
6 be in the bill?

7 MR. HEBERT: No. I mean, it's -- you
8 know, I don't really know about a lot of the documents
9 on that list of things you can produce, why producing
10 two of those documents is, you know, a reliable way of
11 proving who you are. For example, we won't allow
12 people now, if this bill goes into effect, to use
13 their voter ID card, their voter registration card,
14 when they show up even if their name is on the books
15 and their card matches that name, but we'll allow them
16 to use a court record from a sex change operation and
17 a library card to vote.

18 Now, you know, the last time I checked a
19 library card to me doesn't seem to be as reliable as a
20 government-issued voter registration card. So, you
21 know, there's some real questionable things like that
22 in the bill. Sen. Duncan -- I mean, Sen. Fraser would
23 probably know why he put it in there, but for the life
24 of me -- I haven't seen that in a bill before I have
25 to say.

1 SEN. ZAFFIRINI: You haven't?

2 MR. HEBERT: No.

3 SEN. ZAFFIRINI: Thank you very much.

4 Thank you.

5 MR. HEBERT: Thank you.

6 SEN. DUNCAN: The Chair recognizes

7 Sen. Gallegos.

8 SEN. GALLEGOS: Thank you, Mr. Chairman.

9 Gerry, let me ask you going back on redistricting and
10 let's go to those states that have enacted -- well,
11 let's go to the states that have enacted photo ID
12 laws. Some of those states I understand were red
13 states and all of a sudden they turned to blue. And
14 it's my understanding that in a lot of those states
15 the Latino population has surged. Is that -- is that
16 your understanding?

17 MR. HEBERT: Well, the Latino population
18 is surging in Georgia. I wouldn't describe Georgia as
19 a state that's gone from red to blue.

20 SEN. GALLEGOS: I understand, but
21 Indiana --

22 MR. HEBERT: I mean, I would -- Indiana
23 is no longer completely controlled by Republicans, I
24 don't think. So you have a situation there where
25 maybe they've gone from red to purple trending, you

1 know, obviously in both of those states and in other
2 states that have considered voter ID, and I believe
3 it's now pending in the Utah legislature. Republicans
4 have controlled and had a monopoly on the entire state
5 government.

6 SEN. GALLEGOS: I guess what I'm trying
7 to ask you is that in these state that are all of a
8 sudden turning minority, what I would say minority,
9 the Latino population coupled with the
10 African-American population is outranking the Anglo
11 population in those states, and it's showing in the --
12 at the ballot box especially during this last
13 election. Would you -- would you agree?

14 MR. HEBERT: Well, certainly in Georgia
15 the Latino population has been growing substantially
16 in recent years. I'm not familiar that much with
17 Indiana's demographics as I am with Georgia's.

18 SEN. GALLEGOS: Well, let's just stay
19 with Indiana. You know, what we saw on CNN and some
20 of the other figures that we're seeing is there was a
21 tremendous increase in Latino votes in that state that
22 turned it -- a red state into a blue state. And what
23 I'm looking at here, Mr. Hebert, is that as these
24 states grow all of a sudden -- for example, Indiana,
25 as they grow into -- the population increased in the

1 Latino community. Like Indiana all of a sudden, they
2 introduced and passed a voter ID bill, a photo -- a
3 voter ID bill. And I guess what I'm concerned is that
4 it's starting a pattern as where the Latino population
5 is increasing, that all of a sudden you have proposed
6 legislation on photo ID.

7 And now we're in Texas. Let me just
8 give you some early numbers that we've gotten before
9 we get into the census and before the Secretary of
10 Commerce approves numbers. The State of Texas in the
11 last ten years from 2000 to 2010 over 90 percent of
12 the Texas growth will be minority. There's an
13 indication of projected growth by 4 million in the
14 last ten years out of -- for 4 million. Out of those
15 4 million, 3,158,077 Hispanic, 3 million -- over
16 3 million of that 4 million is Hispanic. Now -- and
17 that's just projected. I think it's going to be
18 higher after the Secretary of Commerce confirms the
19 numbers.

20 Now, in Houston, we're looking at --
21 we're looking at a 1.1 -- in the last ten years -- in
22 the last ten years a 1.1 million increase in ten
23 years. Now, I'll tell you that the Secretary of
24 Commerce has not confirmed those numbers. I believe
25 that number will be 1.5 million.

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1 So what I'm getting at here and I'd like
2 you to answer is that all of a sudden we have a Latino
3 explosion population here -- which by the way, we
4 probably will get minimum three, probably maximum four
5 congressional districts in Texas, one for sure in
6 Houston and one for sure in Dallas. Now, the
7 others -- I don't know where the others go, and
8 probably additional Latino seats -- and I'm talking
9 about these will be Latino seats, additional Latino
10 seats in Houston, maybe two, and another extra Senate
11 seat -- another Senate seat belt for Dallas, Latino,
12 and probably four other State Rep seats in Houston,
13 Latino.

14 So my concern is looking at these
15 patterns all over the country with Latino explosion in
16 population, and all of a sudden voter ID legislation
17 in these areas, in these states, all of a sudden we
18 have an explosion like this. Oh, yeah, we'll take the
19 money from Washington after the census is taken and
20 those educational monies, those transportation monies,
21 education monies and healthcare monies, we'll take it,
22 we'll take it. But all of a sudden, we have a voter
23 ID bill that's on the table here before us. Because
24 of this Latino explosion, they know that we're going
25 to get these congressional districts, which is going

1 to empower Latinos.

2 And in redistricting -- and I was there
3 with you. Troy Fraser was a co-chairman with me, and
4 I saw what happened. I saw what happened, this little
5 debate you had with Sen. Wentworth, I saw what
6 happened. Who really lost were the Latinos. They
7 were the ones that lost. They got cut up three ways
8 in Dallas. They tried to cut us up in Houston, and
9 they tried to cut us up in some other areas. What
10 they do is put us in areas to elect whoever and cut us
11 up and keep us -- and keep us separated. I saw that,
12 and you saw that.

13 So what I'm asking you is that this
14 pattern -- this pattern where Latino explosion
15 population and all that is do you see a pattern of
16 where that growth is? All of a sudden we want voter
17 ID, voter ID to suppress -- that's my guess -- is to
18 not only suppress our votes, but also try to suppress
19 our empowerment.

20 MR. HEBERT: Well, let me say that there
21 clearly is a surging Latino population in Texas and in
22 other states that have seen a photo ID bill go into
23 effect. And as I testified earlier, Sen. Gallegos,
24 the fact is that most, if not all, of the groups that
25 are going to be adversely affected -- and I'll single

1 out Latinos because that's your question -- that they
2 are growing, and they are growing fast, and they are
3 growing as a percentage of the Texas voting
4 population, and they tend to skew Democratic, at least
5 now. And so that to me explains the urgency that
6 Republicans have in these states to enact a voter ID
7 bill.

8 SEN. GALLEGOS: Mr. Hebert, what I'm --
9 I mean, what I meant and really wanted your opinion is
10 that as this population grows and all this population
11 is coming to Texas, which obviously enriches us with
12 four more congressional seats, these other seats I
13 spoke about, plus the money that the census gives us
14 in those numbers -- what I'm saying is that Texas is
15 benefiting from that population increase, not only in
16 empowerment, but also in money.

17 And for some reason, like in Indiana
18 where the Latino population is increasing, Denver and
19 those other states that were red, now going blue, that
20 legislation is proposed or being proposed in these
21 states that all of a sudden are turning
22 minority/majority.

23 My concern is that Texas will take the
24 population increase, they'll take the empowerment,
25 they'll take the four congressional districts, they'll

1 take the money from the census, yet they introduce a
2 bill to suppress the Latino and the minority
3 community. That's my concern on the pattern. So
4 wouldn't you agree with me or at least give me your
5 opinion that that's the type of pattern we're seeing?
6 Increase in Latino population? All of a sudden we've
7 got a suppression bill here. They might as well put
8 an amendment to suppress -- that this bill suppresses
9 all Latinos, the elderly and the African-Americans.
10 You might as well. That's what I see here. That's
11 the pattern I'm seeing. I just want your opinion.

12 MR. HEBERT: Well, my opinion is that
13 voter ID bills, including the one in Texas, are a part
14 of a pattern of suppressing minority votes, and that's
15 what this bill will do in my opinion, and I've
16 testified to that effect. And I agree with you that
17 the surging Latino population here will likely justify
18 the creation of additional Latino seats when
19 redistricting comes around. And it goes counter to
20 the fact that you have the Latino population growing
21 as fast as it is as a proportion of the state, and at
22 the same time that they're growing and giving benefits
23 to the State of Texas, as you point out, that we end
24 up with a photo ID bill that actually will target them
25 and suppress a lot of people's voting rights.

1 SEN. GALLEGOS: Thank you for
2 your opinion, Gerry. Thank you.

3 SEN. DUNCAN: The Chair recognizes
4 Sen. Shapiro.

5 SEN. SHAPIRO: Thank you,
6 Mr. President -- Mr. Chairman and Members. I have a
7 couple of issues that I'd just like to visit with you
8 about, Mr. Hebert. I do remember very closely the
9 debate and the dialogue on redistricting and your role
10 in that. And certainly one of the issues that still
11 kind of gnaws at me is the idea -- and I just want a
12 yes or a no answer. I don't want anything else. Did
13 you take maps from the offices in this building during
14 redistricting? Yes or no?

15 MR. HEBERT: Yes.

16 SEN. SHAPIRO: Okay. That's all I
17 needed to hear. So you did take maps that were not
18 yours out of this building?

19 MR. HEBERT: Now you're adding more
20 facts. No, I did not take maps that were not mine. I
21 took my maps, or maybe my client's maps maybe.

22 SEN. SHAPIRO: Did you get permission to
23 take those maps, or did you just take them?

24 MR. HEBERT: The maps that I took I had
25 permission to have in my possession.

1 SEN. SHAPIRO: And who gave you
2 permission to take those maps?

3 MR. HEBERT: My clients.

4 SEN. SHAPIRO: Your clients gave you
5 permission. Okay. So you did take maps?

6 MR. HEBERT: I did.

7 SEN. SHAPIRO: Okay. That's what I need
8 to know.

9 The second question I have is completely
10 different, and that is why do you believe the federal
11 government has rules in place, laws in place, that
12 actually say that when you go to an airport you must
13 have a photo ID?

14 MR. HEBERT: For security purposes.

15 SEN. SHAPIRO: For security purposes.
16 And you testified earlier that someone came through --
17 I'm sorry I don't remember who you said -- came
18 through, did not have to use their photo ID, went
19 back, was integrated, came back out and went through
20 as they did.

21 MR. HEBERT: Correct.

22 SEN. SHAPIRO: It's ironic because about
23 a week ago I was going through, as we all do so often,
24 and I happened to see a sign up right there at that
25 isle as you -- before you give your ID. And the note

1 on the poster says "Why" -- with a question mark --
2 "Why do I have to show my ID? Identity matters. We
3 need to make sure your ID and your boarding pass
4 match." And it's signed Transportation Security
5 Administration.

6 These rules, these laws that are put in
7 place have exceptions, as you mentioned earlier, and
8 it seems to me the correlation between what this bill
9 is saying and what we are trying to do and what maybe
10 the federal government has done are very similar
11 because in essence it's the same methodology.

12 We have a law. We say we want you to
13 have a photo ID. You don't have it. In this
14 particular bill, it says here are the other options
15 that you can go through in order to qualify. I don't
16 think there's a whole lot of difference between the
17 two.

18 And I think that we're doing what you're
19 asked to do with a Sam's card. As we mentioned
20 earlier, I can't charge on my Cosco card unless my
21 picture is on it. Identity matters. I can't go to my
22 bank and cash a check or another bank without my photo
23 ID. Identity matters. I mean, you could go on and
24 on. The library books, identity matters.

25 And in this case, I think that's, in

1 fact, what we're doing. Do you agree that identity
2 matters?

3 MR. HEBERT: I agree that identity
4 matters, but I disagree that what you're doing in this
5 bill is similar to what, say, the TSA is doing at the
6 airport.

7 SEN. SHAPIRO: Okay. The methodology is
8 the same. It may not be the same heightened awareness
9 or the same difficulty with security, but we happen to
10 believe that the integrity of the vote is just as
11 important and just as secure.

12 MR. HEBERT: I see the procedures as
13 being different at the airport than they are in
14 voting.

15 SEN. SHAPIRO: And how -- and how is
16 that?

17 MR. HEBERT: Well, for example, at the
18 airport when you go through security and you don't
19 have a picture ID, they pull you aside and they ask
20 you questions. And if they're satisfied, you can get
21 on, you get on.

22 SEN. SHAPIRO: That's what I just said.

23 MR. HEBERT: Well, the difference is
24 that in Texas if you go to show up at the polls and
25 you have a voter -- valid voter registration card

1 under this bill and that's all the information you
2 have, you have to cast a provisional ballot, and
3 that's not going to get counted. So the difference is
4 that in one, you're getting on the plane, and in the
5 example of the voter ID, you're not getting on the
6 plane.

7 SEN. SHAPIRO: And you wouldn't have the
8 opportunity then to say "Here is my valid information.
9 Here is my check. Here is my electricity bill"? I
10 mean, there's a whole litany of things that you could
11 have with you at the same time that you went to go
12 vote.

13 MR. HEBERT: Right, but if you go to the
14 airport with nothing, you get to get on the plane if
15 you can establish, through questions, that you're not
16 a security risk. If you go to the polls with no ID
17 except for your voter card, you're not going to be
18 able to vote except for a provisional ballot, and
19 there's no procedure in the bill for how to rectify
20 that situation once your provisional ballot is
21 counted. 70 percent of the provisional ballots never
22 get counted.

23 SEN. SHAPIRO: Well, I think the issue
24 here is identity matters, and I think what we're
25 trying to do is just make sure that everybody's

1 identity matches who they are. That's not -- that is
2 not out of line with about 25 other things that we do
3 currently under laws or procedures or rules that exist
4 throughout this country on lots of different issues.
5 It was just ironic that you mentioned the airport
6 because I just happen to have written that down while
7 I was at the airport. Thank you.

8 MR. HEBERT: Thank you. You know,
9 Sen. Shapiro, I own a restaurant, and we check IDs for
10 people who we think are underage drinking. And when I
11 went through the ABC training course, the alcoholic
12 beverage, and they showed me fake IDs, I could not
13 tell the difference between a valid driver's license
14 and a fake one. So I agree identity matters, but it's
15 often very difficult to base that decision on a photo
16 ID, including a driver's license.

17 SEN. DUNCAN: Mr. Hebert, there are no
18 other Members in queue to question you. So you are
19 free to leave.

20 MR. HEBERT: Thank you.

21 SEN. DUNCAN: Thank you.

22 Mr. Patrick, for what purpose --
23 Sen. Patrick?

24 SEN. PATRICK: I was going to ask
25 Mr. Hebert a question, but I don't think (inaudible).

1 **TESTIMONY BY THOMAS WHEELER**

2 SEN. DUNCAN: Our next witness, Members,
3 is Thomas Wheeler. Mr. Wheeler, you have written
4 testimony that you've submitted. It will be
5 Exhibit 28, and it will be entered into the record.

6 (Exhibit No. 28 marked and admitted)

7 SEN. DUNCAN: If you'll state your name
8 and who you represent? You have ten minutes.

9 MR. WHEELER: Thank you, Mr. Chairman,
10 Members of the Committee. My name is Tom Wheeler. I
11 represent myself. I am the Chairman of the Indiana
12 State Election Commission. I have held that position
13 for the last five years.

14 The Indiana State Election Commission is
15 a bipartisan Commission, it is made up of two
16 Republicans and two Democrats, and as I mentioned I am
17 the Chair of the Commission. We share responsibility
18 for elections, campaign finance, candidate inquiries
19 and related matters with the Indiana Secretary of
20 State.

21 The document and the statement that has
22 been introduced as Exhibit 28 is a statement prepared
23 by the Indiana Secretary of State Todd Rokita, whose
24 name is -- it probably won't be unfamiliar to you for
25 those of you who have read the Crawford decision.

1 I'm not going to engage in a polemic
2 here this evening. I know we're late at night, and a
3 lot of people are still behind us queued up ready to
4 speak. What I would like to do, though, is spend just
5 a couple of minutes telling you in Indiana how we got
6 to where we are and how well it has worked in Indiana.
7 I would not presume to lecture the legislators here
8 from the great State of Texas about how that's going
9 to work here. That's your job as elected officials.
10 But what I can do is tell you how -- why we
11 implemented what we did and how well it worked.

12 Let me take to you 2003, Lake County,
13 Indiana, City of East Chicago. Lake County, a pretty
14 industrial area just outside Chicago filled with steel
15 mills and industrial area. The situation is a
16 contested Democratic Primary race for the Mayor
17 of East Chicago. Mr. Pabey, the Police Chief, is
18 running against the long-time Mayor Mr. Pastrick.
19 Mr. Pastrick was actually filmed and documented in a
20 documentary called The King of Steel Town. For those
21 of you who are involved in the election-related issue,
22 it's a fairly fascinating documentary about how to
23 move forward with election fraud.

24 In this particular case, on election
25 day, May 6, 2003, Jose Torres walked into the Roberto

1 Clemente Center in East Chicago. He signed his name.
2 He cast a vote in this hotly contested Democratic
3 Primary battle for Mayor. In fact, he was one of four
4 people, four family members from the same address who
5 also voted in that election.

6 The problem, Mr. Torres died on December
7 26, 1997 in the Chicago Hospital. Indeed his family
8 had moved out of East Chicago in 1998, yet they kept
9 voting, religiously going to the polls and voting up
10 to 2003. Interesting enough, Mayor Pastrick, the
11 individual who was running as Incumbent Mayor, was
12 actually a funeral home owner where Mr. Torres and
13 many other voters in East Chicago had been prepared
14 for burial.

15 The issue in this case, this was a hotly
16 contested election. It was in a Democratic Primary.
17 Very frankly, the Republicans had no idea that there
18 was any fraud going on. This was whistle blowing
19 between two Democratic candidates.

20 Mr. Pastrick, Mayor Pastrick, lost on
21 election day by 199 votes. He challenged that loss.
22 He alleged wide spread and systemic fraud by
23 Mr. Pabey. Mr. Pabey alleged the same by him. This
24 went to the Indiana Supreme Court. The Indiana
25 Supreme Court found, and I quote, "There was an

1 occurrence of a deliberate series of actions that
2 perverted the voting process and compromised the
3 integrity and results of the election. In view of the
4 uncontested factual findings of the trial court, the
5 contestant established that a deliberate series of
6 actions occurred, making it impossible to determine
7 the candidate who received the highest number of legal
8 votes."

9 When our Supreme Court said to us the
10 fraud was so bad -- "We didn't just have dead people
11 voting. The fraud was so bad that we can't even
12 figure out who won this election, we're going to do it
13 over," that caught the attention of the people of the
14 State of Indiana and the General Assembly.

15 The second factor that caused us to look
16 at our -- look at photo ID as an option was the fact
17 that in Indiana we learned -- and this is set forth in
18 the statement of Secretary Rokita -- we learned that
19 voter registration rates in many of our counties
20 exceeded 100 percent of the estimated voting eligible
21 population. It was opined during the Pabey/Pastrick
22 matter that these excessive voter registration rates
23 encouraged precisely the kind of fraud that we saw
24 during the Pabey/Pastrick election and the subsequent
25 litigation.

1 Taking those two together, the Indiana
2 General Assembly made a determination based upon the
3 concerns about outright fraud, clearly what the
4 Indiana Supreme Court had found in our case, that
5 there was a need to instill voter confidence in the
6 integrity of our election process and in the manner in
7 which we conducted that election process particularly
8 with respect to the in-person voting.

9 As a consequence, the Indiana General
10 Assembly adopted what is the nation's most restrictive
11 photo ID law. I would note that it's far more
12 restrictive than many of the provisions that you have.
13 For example, we don't have an opt-out provision where
14 an individual can bring two forms of various different
15 pieces of ID, including as I believe one of the
16 Senators referred to, a court document related to a
17 gender change. We don't have any of those. Basically
18 you have to -- you have to come forward with a
19 state-issued ID that displays the voter's photo and
20 expiration date and the voter's name.

21 Now, if I might, stepping forward,
22 recognizing my limited time, you've spent some time
23 talking about -- and I believe Mr. Von Spakovsky
24 discussed the University of Missouri study. What have
25 we learned over the course of this? We've had now

1 three elections in which we've done photo ID, and what
2 we've learned is that there haven't been any problems.
3 The Secretary of State in his notation in the 2008
4 election, for example, received 1300 calls, complaints
5 from voters. Two dealt with photo ID. It's not a
6 situation where we're having massive problems.

7 The case that went to Crawford -- the
8 Crawford case, the ACLU and the various litigants,
9 including the Indiana Democratic party, referred to a
10 apocalyptic disenfranchisement of voters. The simple
11 fact is that hasn't happened in Indiana. It just
12 hasn't happened.

13 Now, with respect to the impact of this
14 on minority voters, we do know from the University of
15 Missouri study that Indiana voter registration and
16 Indiana turnout has increased rather dramatically.
17 Indeed attached to Secretary Rokita's statement, the
18 2004 General Election, 58 percent; 2008 General
19 Election, 62 percent. Now, I've heard some of the
20 Senators say "Well, that was because Barack Obama was
21 on the ticket."

22 The key factor -- and this is what the
23 University of Missouri report looked at was that 2002,
24 which was an off-year election, pre-Barack Obama,
25 which was nonphoto ID, our turnout was 34 percent.

1 The 2006 General Election, again pre-Barack Obama, a
2 comparable off-year election, turnout was 40 percent.
3 We went up 6 percent after implementing photo ID.
4 That certainly wasn't the kind of disenfranchisement
5 that was predicted, the apocalyptic prediction of
6 disenfranchisement. Indeed we had a better voter
7 turnout. I would suggest that that's counter to most
8 of the states within the union.

9 Now, what happened there? I don't know
10 what the answer is. I mean, there's been speculation,
11 and there's been discussion and studies that talk
12 about voter confidence.

13 What I can tell you and one of the most
14 interesting things is the conclusion in the University
15 of Missouri report, that, in fact, photo ID actually
16 benefits Democrat -- traditional Democratic voters,
17 minorities and otherwise. And one of the interesting
18 parts that has not been referenced in this -- and it's
19 in this report at -- under Section 4. They refer to
20 the fact that on the other hand, the fact that there
21 were no Democratic candidates in the 2006 Senate race
22 might have led to a lower turnout than otherwise. In
23 fact, my examination of historical Senate election
24 data does indeed suggest that state voter turnout
25 tends to be lower when there's an uncompetitive Senate

1 election at the top of the state ticket, all else
2 constant. Assuming that this phenomenon occurred in
3 2006 in Indiana, then the photo ID likely led to an
4 even greater increase in the voter turnout than the
5 2 percent observed in the raw data.

6 So the University of Missouri study said
7 we saw 2 percent because there was -- and in 2006 very
8 frankly Democrats really didn't run anybody on a
9 statewide thing, yet the Democratic voter turnout went
10 up. Well, it doesn't sound like photo ID has pushed
11 Democratic turnout down, at least based upon the
12 University of Missouri study which was focused purely
13 upon Indiana.

14 Now, I'm not going to make predictions
15 about what's going to happen in Texas. That's your
16 responsibility to take this information and figure out
17 if it works for Texas, but I can tell you that with
18 respect to us it's worked pretty well.

19 And let me tell you the other thing that
20 photo ID does, and this is the most significant thing
21 that photo ID did in Indiana. You guys have spent the
22 last 14 or so hours -- we've got Republicans pointing
23 at Democrats and saying "Voter fraud." We've got
24 Democrats pointing at Republicans and saying "Voter
25 suppression."

1 Well, what photo ID has done in Indiana,
2 it's taken that argument off the table. We've been
3 unable to engage in election reform, and we in Indiana
4 weren't able to do that for years because we just
5 pointed at each other that way. Photo ID brought
6 confidence to the parties, to the Republicans, to the
7 Democrats, to allow us to engage in meaningful
8 election reform. A, we were allowed -- we began
9 purging our voter rolls. B, we went to satellite
10 voting. We went to early voting. We've got no
11 absentee balloting. I mean, we've been able to do
12 that because photo ID built a trust level between our
13 legislators to allow us to engage in other election
14 reforms and needed election reforms. And I would
15 suggest to you that's probably the most valuable part
16 of photo ID is it allows you to get past the finger
17 pointing you've been doing for the last 14 hours of
18 voter suppression versus voter fraud. It gets you
19 past that and allows you to engage in meaningful
20 election reform.

21 I see that my time is up. I'd be happy
22 to answer any questions.

23 **QUESTIONS FROM SENATE FLOOR**

24 SEN. WENTWORTH: Thank you. The Chair
25 recognizes Sen. Whitmire.

1 SEN. WHITMIRE: Mr. Wheeler?

2 MR. WHEELER: Yes, sir?

3 SEN. WHITMIRE: Thank you for appearing.
4 I was curious listening to your describing what
5 instigated your program in Indiana. You were talking
6 about this massive fraud that the Supreme Court said
7 they couldn't even determine who the winner was.
8 Could you describe the massive fraud that was so
9 prevalent?

10 MR. WHEELER: The massive fraud as
11 described by this?

12 SEN. WHITMIRE: Yeah. You went through
13 this long scenario about an election that was settled
14 by a hundred votes, and it went to the Supreme Court,
15 and the Supreme Court said it was so bad they just
16 really couldn't hardly tell who won. What are the
17 facts of that massive fraud? I'm trying to see --
18 I've never heard of anything like that in Texas. I'm
19 trying to appreciate what you were facing.

20 MR. WHEELER: Absolutely. In the Pabey
21 case, we saw fraud in two areas: We saw some
22 in-person fraud, and we saw a lot of absentee fraud.
23 What they did is they used our bloated voter
24 registration list to engage in both absentee ballot
25 fraud and direct in-person voting, according to the

1 record that was in -- before the Indiana Supreme
2 Court, which was --

3 SEN. WHITMIRE: Where -- do you-all
4 have -- do you-all have laws against voter fraud?

5 MR. WHEELER: Absolutely we do.

6 SEN. WHITMIRE: Was anyone prosecuted?

7 MR. WHEELER: Not that I'm aware of,
8 Senator.

9 SEN. WHITMIRE: Why not?

10 MR. WHEELER: Well, I believe the record
11 showed that a gentleman by the name of Bernard Carter
12 was the Lake County Prosecutor at the time. According
13 to the records in the case, he owned several of the
14 apartment buildings that were vacant but were used as
15 home addresses for fraudulent voters. Now, I don't
16 believe that Mr. Carter, in fact, was ever implicated
17 in that, but I do believe that a lot of those
18 fraudulent addresses did take place at --

19 SEN. WHITMIRE: Is it fair to say
20 you-all have pretty lax prosecution of criminal
21 acts?

22 MR. WHEELER: I'd say it's very fair
23 that there's lax prosecution of voter fraud,
24 absolutely.

25 SEN. WHITMIRE: Well, would you -- have

1 you learned -- been in the state long enough to know
2 that we don't tolerate it? And if you could show us
3 instances of fraud -- do you know of any fraud that's
4 been alleged in the State of Texas?

5 MR. WHEELER: I believe there's a
6 witness coming up immediately after me that is
7 familiar with fraud in Texas.

8 SEN. WHITMIRE: Do you know in that
9 instance was someone prosecuted?

10 MR. WHEELER: No, sir, I don't.

11 SEN. WHITMIRE: Well, it makes a big
12 difference if you're trying to fix something and if
13 you can discover the fraud and you don't prosecute it,
14 I think you've got a criminal justice problem, which
15 we don't have in the State of Texas.

16 Do you have a significant bilingual
17 speaking population in Indiana?

18 MR. WHEELER: We have a 5 percent
19 Hispanic population.

20 SEN. WHITMIRE: Are you familiar with
21 our numbers in the State of Texas?

22 MR. WHEELER: Yes. If you'll give me
23 just a moment.

24 SEN. WHITMIRE: Well, let me just help
25 you. Would you not agree that Texas is much more

1 diverse and has many more Spanish-speaking residents
2 than you'd find in Indiana?

3 MR. WHEELER: I'm told 36 percent.

4 SEN. WHITMIRE: What about the cost of
5 introducing your ID program in Indiana, what did you
6 approximately spend?

7 MR. WHEELER: That's an excellent point,
8 and that is, if you'll look at Secretary Rokita's
9 statement -- I don't know if you happen to have it in
10 front of you.

11 SEN. WHITMIRE: Yeah, I've read it.

12 MR. WHEELER: We spent about
13 1.25 million in HAVA Funds, which were federally
14 provided funds. So we were lucky enough not to have
15 to use our own state funds. I have no idea whether
16 you have HAVA Funds that are available for this
17 particular use, but the --

18 SEN. WHITMIRE: Well, we've been
19 promised. Are you familiar with how they intend to
20 fund the plan that you're here endorsing?

21 MR. WHEELER: I have no idea.

22 SEN. WHITMIRE: Well, it's pretty much a
23 promise by Senator Williams that he would work with us
24 to get those funds and that we've got some spots, but
25 we haven't scheduled those spots, nor do we know the

1 amount. Do you think that would be significant?

2 MR. WHEELER: I think it's significant
3 to make those expenditures because I think it makes it
4 work. If you'll look at Indiana, what you heard again
5 and again earlier that Indiana was special because we
6 had 99 percent of people that had photo IDs, and I'd
7 suggest it's even higher than that, and that's
8 specifically because of this outreach.

9 SEN. WHITMIRE: One last thing that
10 you've got my attention on at this late hour. You
11 keep being so impressed with the turnout in 2008.

12 MR. WHEELER: I think I mentioned --
13 (Simultaneous discussion)

14 SEN. WHITMIRE: Don't you think the
15 2004 -- and I was reading the Secretary of State's
16 comparison about the Presidential Election in 2004,
17 particularly the Democratic Primary. Surely would you
18 not agree with me that's not apples and apples
19 comparing turnout and the dynamics and the reasons for
20 the 2004 election versus the 2008 when you had such a
21 contested Presidential Primary?

22 MR. WHEELER: Let me tell you the most
23 amazing thing about the 2008 race. If you buy into
24 the argument that photo ID in Indiana was designed to
25 suppress African-American and Hispanic voters and

1 typical Democratic voters, that's the first year in
2 the last 40 years that Indiana went Democratic in the
3 Presidential Election.

4 SEN. WHITMIRE: Well, probably because
5 of the state -- wouldn't you agree that your economy,
6 your unemployment and the elements that were a part of
7 that campaign caused that turnout and also for sure
8 the selection and opportunity to vote for the --
9 whether it be Mrs. Clinton or Obama or others? I
10 mean, everywhere in the country they were experiencing
11 huge additional turnouts. And, in fact, I will turn
12 and ask you, how do you know it wouldn't have been
13 greater had you not had the voter ID?

14 MR. WHEELER: I'll tell you why I know
15 that, because the governor of the State of Indiana won
16 by almost 20 points, Republican governor. Every
17 statewide --

18 SEN. WHITMIRE: No, we're talking
19 about -- you're talking about the General Election.
20 I'm talking about -- I'm talking about the Primary.
21 You like to point out your great increase in numbers
22 in 2008. How do you know it wouldn't have been
23 greater if you had not had the voter ID?

24 MR. WHEELER: I have no idea. What I
25 will tell you --

1 SEN. WHITMIRE: You have no idea.
2 Repeat that for me. You sit up there and say you had
3 an outstanding turnout.

4 MR. WHEELER: Can I finish my
5 question -- my answer?

6 SEN. DUNCAN: Hold on a minute, sir.
7 You're talking over each other, and the court reporter
8 can't get a record. Senator, if you-all could
9 exchange questions and answers?

10 SEN. WHITMIRE: I'm sorry. Is it not
11 true you have no way of knowing whether you would have
12 had a greater turnout if you had not had the voter ID
13 in the Democratic Primary in 2008?

14 MR. WHEELER: In the Democratic Primary?

15 SEN. WHITMIRE: Yeah.

16 MR. WHEELER: We had 73 percent
17 Democratic turnout in the Primary.

18 SEN. WHITMIRE: And I think I -- and you
19 probably know the reason because of the opportunity to
20 vote for those outstanding candidates. It was a very
21 contested Presidential Democratic Primary much more so
22 than the 2004 experience, but you keep pointing to
23 that as such a success for the voter ID. And I would
24 just ask you, how do you know it would not have been
25 greater had you not had the obstacles of a voter ID?

1 MR. WHEELER: How do I know it wouldn't
2 have been less? I mean, the University of Missouri
3 study tells me that but for photo ID it should have
4 been less.

5 SEN. WHITMIRE: Do you-all have --

6 MR. WHEELER: If I can answer -- answer
7 the question that you had asked? What I do know is
8 that in 2008 in the General Election we had massive
9 turnout.

10 SEN. WHITMIRE: Yeah.

11 MR. WHEELER: Barack Obama won in
12 Indiana, the first Democrat in the last 40 years. We
13 also had -- and you asked me if I could control for
14 economic conditions. You said, "Well, couldn't it
15 have been bad economic conditions that caused that?"

16 SEN. WHITMIRE: Sure.

17 MR. WHEELER: And the answer is no. The
18 governor of the State of Indiana won re-election by 20
19 points. Every Republican officeholder won in Indiana
20 other than Barack Obama. So what I would answer your
21 question is no, it was not economic conditions.

22 SEN. WHITMIRE: Without -- excuse me.
23 Without knowing the circumstances of the contested
24 races and the popularity of your governor who may
25 have, you know, adopted Democratic policies for all I

1 know --

2 MR. WHEELER: This was Mitch Daniels.

3 He did --

4 SEN. WHITMIRE: You know, I do not know
5 the circumstances. All I'm simply saying is
6 everywhere in the country, Texas included, we
7 experienced greater turnout because of the shape of
8 the country, the opportunity to vote for the popular
9 candidates on both sides. So the fact that you -- the
10 fact that you're trying to attribute voter ID to
11 allowing a greater turnout, we experienced it in
12 Texas, and we don't have voter ID.

13 MR. WHEELER: Senator, I did not --

14 SEN. WHITMIRE: One last thing I want to
15 ask you about. Did you say your reforms did away with
16 absentee voting, your voters?

17 MR. WHEELER: No. We were able to
18 get -- we went to no-fault absentee voting.

19 SEN. WHITMIRE: You went to what?

20 MR. WHEELER: We have no-fault absentee
21 voting, which is to say that basically all you have to
22 do is say "I'm going to be out on election day," and
23 you may go vote.

24 SEN. WHITMIRE: We have that. Do you
25 have mail-in early voting?

1 MR. WHEELER: We do.

2 SEN. WHITMIRE: Do you ever experience
3 any alleged fraud in that area?

4 MR. WHEELER: I think in Pabey vs.
5 Pastrick there's documentation of it.

6 SEN. WHITMIRE: Why didn't you address
7 that?

8 MR. WHEELER: Because there was a
9 political compromise.

10 SEN. WHITMIRE: Oh, really? You-all do
11 that, too?

12 MR. WHEELER: Occasionally.

13 SEN. WHITMIRE: All right. Thank you
14 for being here.

15 MR. WHEELER: Thank you, Senator.

16 SEN. DUNCAN: The Chair recognizes
17 Sen. Watson.

18 SEN. WATSON: I appreciate you being
19 here. Senator Whitmire covered most of what I wanted
20 to ask, but I just want to make sure I'm clear. You
21 came here to give some very specific examples about
22 Indiana, but you don't have any statistical analysis
23 or data about the effects that Senate Bill -- proposed
24 Senate Bill 362 would have on Texas, African-Americans
25 in Texas or Hispanics in Texas or anybody else in

1 Texas, do you?

2 MR. WHEELER: Absolutely not. I served
3 as an elected official prior to resigning to taking
4 this Commission job. That's your job. That's the job
5 of you guys. I wouldn't presume to tell you that.

6 SEN. WATSON: I appreciate you being
7 here. Thank you very much.

8 MR. WHEELER: Thank you.

9 SEN. DUNCAN: Thank you, Mr. Wheeler.
10 There are no other members queued up to ask questions.

11 MR. WHEELER: Thank you.

12 SEN. DUNCAN: We appreciate your
13 appearance, and welcome to Texas.

14 **TESTIMONY BY CHANDLER DAVIDSON**

15 SEN. DUNCAN: The next witness we'll
16 have is Chandler Davidson. Mr. Davidson, as you're
17 approaching, you have submitted written testimony.
18 That will be Exhibit 29.

19 (Exhibit No. 29 marked and admitted)

20 SEN. DUNCAN: And you are -- if you
21 will, state your name and who you represent, and you
22 have ten minutes.

23 MR. DAVIDSON: Honorable Senators, I'm
24 privileged to be here at your invitation. Thank you.
25 Between 1966 and 2003, I taught politics and sociology

1 at Rice University and specialized in voting behavior
2 and voting rights.

3 When I joined the Rice University
4 faculty in 1966, two persons I made a point of meeting
5 because of my research interests both had offices on
6 Lyons Avenue in Houston's Fifth Ward. One was a
7 charming, if rather formidable young woman, who had
8 just been nominated for a seat in this body and with
9 whom I enjoyed a friendship that lasted the rest of
10 her life, Barbara Jordan. I see her smiling face over
11 there. She had twice previously failed to win
12 nomination for a House seat in a heavily white
13 district in which racially polarized voting prevailed.
14 Her Senate district, however, was almost half black,
15 and she was able to win.

16 The other person I met was a dentist,
17 also a charming individual, Dr. Lonnie Smith, the
18 named plaintiff in Smith v. Allright, the case
19 Thurgood Marshall successfully argued before the
20 Supreme Court in 1944 invalidating the Texas White
21 Primary. Ladies and gentlemen, I feel their presence
22 today in this room.

23 Given the long history of legally
24 sanctioned disfranchisement of large and disparate
25 groups of citizens from the founding of the Republic

1 to the recent past, Senate Bill 362 raises important
2 questions to scholars of voting rights. Indeed the
3 bill brings to mind events during the half century
4 following the Civil War when the language of
5 progressive reform in Texas cloaked the
6 disfranchisement of blacks, Latinos and poor whites,
7 those most likely to vote for Republican or populist
8 candidates. Actually adopted for partisan and
9 racially discriminatory purpose, these laws were often
10 presented as high-minded attacks on fraud, efforts to
11 purify the electorate that would only inconvenience
12 vote sellers or the ignorant and shiftless.

13 The poll tax was one of the most
14 notorious disfranchising mechanisms of its day. The
15 current debate over Senate Bill 362 as well as similar
16 bills in other states has led to claims that they are
17 a modern day poll tax. This implies that the Texas
18 bill, too, falls within the ignominious American
19 tradition of disfranchising laws passed under the
20 guise of good government reform.

21 Frederick Ogden, perhaps the foremost
22 scholar of the poll tax, wrote in the 1950s, I quote,
23 "While critics of legalized restrictions on Negro
24 voting may find it hard to discover any high moral
25 tone in such activities, these restrictions reflected

1 a movement for purifying the electoral process in
2 southern states."

3 Ogden quotes the editor of the
4 San Antonio Express writing in 1902, "By requiring a
5 poll tax receipt, secured six months previous to an
6 election, fraudulent elections can be prevented almost
7 entirely."

8 The most accessible photo ID required by
9 Bill 362 probably consists of the state's driver's
10 license. Obtaining one has been shown in other states
11 to be a good deal more difficult for some people than
12 it might seem at first glance. For example, at least
13 43,000 persons of voting age in Indiana are estimated
14 to have neither a driver's license or the other most
15 likely form of photo ID in that state. The number
16 of -- the number in Texas would probably be
17 significantly greater.

18 The demographic characteristics of
19 persons lacking the requisite ID are suggested by a
20 November 2006 telephone survey of 987 randomly
21 selected voting-age American citizens by the
22 independent Opinion Research Corporation conducted for
23 the Brennan Center for Justice at NYU School of Law.
24 11 percent did not have valid government-issued photo
25 ID, while 18 percent of citizens 65 years of age or

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1 older lacked it, as did 25 percent of
2 African-Americans. The latter two demographic groups,
3 the elderly and African-Americans, are more likely to
4 self-identify as Democrats, African-Americans
5 disproportionately so. There is no reason to believe
6 that this national pattern is much different than that
7 in Texas.

8 Have supporters of Senate Bill 362
9 demonstrated that there is a significant degree of
10 fraud of the kind -- that the bill is fashioned to
11 prevent? Others today and tonight have described
12 Attorney General Abbott's unsuccessful effort to
13 uncover personal impersonation fraud.

14 Suffice it to say that Senate Bill 362
15 is designed solely to prevent voter impersonation at
16 the polls. In both 2005 and 2007 Republicans in the
17 legislature introduced similar photo ID bills. In
18 2007, according to a newspaper reporter, Republicans
19 liked the voter ID bill because they believe it will
20 weaken Democrats, but can argue that it is a
21 reasonable requirement because it would prevent vote
22 fraud.

23 Not all Republicans, however, shared the
24 belief that it would curtail fraud. Royal Masset,
25 Former Political Director of the Texas Republican

1 Party, was one. He told a reporter that among his
2 fellow Republicans it was an article of religious
3 faith that voter fraud is causing us to lose
4 elections. Masset did not share that faith. He did
5 believe, however -- he told the reporter, that
6 requiring photo IDs could cause enough of a dropoff in
7 legitimate Democratic voting to add 3 percent to the
8 Republicans vote.

9 When Mr. Abbott's failure to find almost
10 any voter impersonation fraud is placed alongside the
11 fact that the previous legislative votes for a Texas
12 photo ID bill were almost entirely along partisan
13 lines and that the people most likely to be
14 disfranchised by it would be Democratic voters,
15 particularly African-Americans and Latinos as well as
16 lower income, elderly and disabled citizens, Texas
17 Senate Bill 362 appears to fit comfortably within the
18 long and sad history of those in positions of power
19 disfranchising the above populations for partisan
20 gain.

21 Moreover, today's Republicans' attempt
22 at justifications of the bill with claims of voter
23 fraud are at least as dubious as those which attempted
24 to justify the now and unconstitutional poll tax at
25 the beginning of the 20th century.

1 If Texas enacts a photo ID bill, it will
2 join only seven other states that request a photo ID
3 to vote, states disproportionately among the 11 states
4 of the former Confederacy. This, in my opinion, as a
5 scholar whose work is focused on the protection of
6 minority voting rights for more than 40 years, would
7 be an egregious step backward for my native state, one
8 which harks back to the post-reconstruction era
9 disfranchisement whose effects Barbara Jordan and
10 Dr. Lonnie Smith fought with such courage to put
11 behind us. Thank you.

12 **QUESTIONS FROM SENATE FLOOR**

13 SEN. DUNCAN: The Chair recognizes
14 Sen. Shapleigh.

15 SEN. SHAPLEIGH: Thank you, Mr. Chair.

16 Dr. Davidson, let's go over your CV and
17 see just exactly what you've done to get your
18 reputation here in Texas as the leading expert on
19 these issues. You since the '90s have joined with
20 Professor Bernard Grofman with the University of
21 California to do a multi-year study on the Voting
22 Rights Act of 1965, have you not?

23 MR. DAVIDSON: Yes, sir.

24 SEN. SHAPLEIGH: And how many people
25 were involved in that, political scientists,

1 historians, sociologists, voting rights lawyers,
2 others?

3 MR. DAVIDSON: About 30 people, yes,
4 sir.

5 SEN. SHAPLEIGH: And what was the result
6 of that multi-year study? Did you write a book? Did
7 you put out a paper?

8 MR. DAVIDSON: We wrote a book entitled
9 Quiet Revolution in the South, published by Princeton
10 University Press. And in 1994, it had funding from
11 the National Science Foundation and the Rockefeller
12 Foundation. And it was designed to measure the impact
13 of the Voting Rights Act of 1965 on the states that
14 were covered by it -- no, the southern states, the
15 states that are covered by Section 5 of the Voting
16 Rights Act.

17 SEN. SHAPLEIGH: Now, has this work been
18 cited in Supreme Court opinions, United States Supreme
19 Court opinions?

20 MR. DAVIDSON: Senator, I can't
21 remember. A number of pieces of my research have, but
22 I'm not sure that that one has. It was entered in its
23 entirety into the congressional record in 2006 when
24 the question of reauthorizing the nonpermanent
25 features of the Voting Rights Act were under

1 discussion and when those features were coming up for
2 renewal.

3 SEN. SHAPLEIGH: Were you asked to serve
4 on and did you serve on the National Commission on the
5 Voting Rights Act?

6 MR. DAVIDSON: Yes, sir.

7 SEN. SHAPLEIGH: And what was the result
8 of that work?

9 MR. DAVIDSON: The Commission held ten
10 hearings around the state -- around the country,
11 various parts of the nation to hear people testify as
12 to problems of voting that they encountered. And on
13 the basis of those hearings and other research, I was
14 tasked with drafting the report that the Commission
15 ultimately published entitled Protecting Minority
16 Voters.

17 SEN. SHAPLEIGH: Now, we've heard from a
18 bunch of folks from Indiana, a bunch from Georgia. Is
19 it safe to say you're the leading expert in Texas on
20 the Voting Rights Act?

21 MR. DAVIDSON: I am one expert, yes.

22 SEN. SHAPLEIGH: Let me ask you this:
23 You've recited in your paper, you've recited in your
24 testimony here the long and sad and dark history of
25 voter suppression in the State of Texas. Do you have

1 any doubt having looked at what is going on here today
2 that this bill is in line with that long, dark history
3 as an act of voter suppression?

4 MR. DAVIDSON: Senator, it looks to me
5 as though it does fall within that historical
6 framework.

7 SEN. SHAPLEIGH: Let me ask you this:
8 When we look at this bill and based on your Texas
9 studies, as this bill will be enforced, we've looked
10 at the fiscal note, this is going to be enforced by
11 poll workers all across the vast diverse state, 24
12 million people from the border to the Panhandle, is
13 there serious potential for discriminatory enforcement
14 of the ID requirements that are contained in this bill
15 at the polls?

16 MR. DAVIDSON: Yes, sir, I think there
17 are. One of the things that came through in the
18 hearings which the National Commission on the Voting
19 Rights held across the country and especially in areas
20 with significant Hispanic populations was that there
21 is still a great deal of difficulty that Hispanics
22 encounter voting.

23 When they get to the polls -- there was
24 a study that was presented by a former member of the
25 Justice Department and a special -- and another who is

1 a specialist in voting at the University of Arizona
2 which looked into the question of how well the Voting
3 Rights Act law regarding language minorities was being
4 conducted at the polling places. And it was found
5 that a significant percentage of Latinos in many of
6 these areas experienced difficulties, and that the
7 actual laws governing language for Latinos and some of
8 the other ethnic minorities were not being enforced.

9 SEN. SHAPLEIGH: Let me ask you this:
10 You are from Texas. Is that correct?

11 MR. DAVIDSON: Yes, sir.

12 SEN. SHAPLEIGH: As a matter of fact,
13 you've spent a lot of time right in these border
14 counties that Sen. Watson has been talking about. Is
15 that true?

16 MR. DAVIDSON: That's correct. I was
17 born on a cattle ranch between Alpine and Fort Davis,
18 Texas.

19 SEN. SHAPLEIGH: So you do know what a
20 colonia is?

21 MR. DAVIDSON: I do indeed.

22 SEN. SHAPLEIGH: Let me ask you this:
23 Let's talk about the Hispanics in the State of Texas.
24 I represent a community that is 77 percent Hispanic.
25 55 percent make less than \$35,000 a year. I just

1 looked that up in the 2000 census numbers. 73 percent
2 speak Spanish as a primary language. So you've got --
3 in addition to the income issues that we see in some
4 of these other cases, you've got the language barrier
5 issues that are not common in Georgia, not common in
6 Indiana. Based on your studies, what potential exists
7 under this bill for discriminatory enforcement of ID
8 requirements at the polls given that language barrier?

9 MR. DAVIDSON: I think there's a
10 significant possibility of problems there, and that
11 goes back to what I mentioned just a minute ago with
12 regard to the finding of how Latinos are treated at
13 polling places.

14 SEN. SHAPLEIGH: Let me ask this
15 question: Many here on this floor have made the
16 allegation and believe that noncitizen Hispanics are
17 voting in large numbers in the State of Texas. We've
18 heard from the Attorney General that there is an
19 epidemic of voter fraud, many quotes in different
20 publications about illegal aliens coming and voting in
21 the State of Texas. Based on your studies and what
22 you know, is there any evidence whatsoever that
23 noncitizen Hispanics are voting in large numbers
24 illegally in this state?

25 MR. DAVIDSON: Well, first of all,

1 Senator, I have not directly addressed that question
2 in any of my studies. So I can't -- I really can't
3 provide an answer based on that. But I will say that
4 it seems to me that given the \$1.4 million that
5 General Abbott spent trying to -- trying to uncover
6 voter fraud and the fact that over a three-year period
7 he has essentially not done so, and to my knowledge,
8 this is the largest effort by the State of Texas in
9 modern history, perhaps ever, to uncover voter fraud,
10 it strikes me as not very plausible that there is much
11 voting going on among illegals in the state, although
12 there's a significant number of them, perhaps as many
13 as 2 million according to the anti-immigration group
14 FAIR.

15 SEN. SHAPLEIGH: Let me ask you this:
16 There has been much made about a free ID being offered
17 in connection with the administration of this act.
18 What, in your opinion, are the hidden costs of getting
19 such a free ID?

20 MR. DAVIDSON: Well, several people have
21 mentioned some of the hurdles and, of course, one of
22 them is just the difficulty that people who don't have
23 automobiles and are poor have in getting a driver's
24 license, the of lack accessibility of DPS and things
25 of that sort.

1 SEN. SHAPLEIGH: When one goes to get
2 one of the other documents that are permitted under
3 this bill, a birth certificate, for example, is there
4 a cost attached to getting that to produce that for
5 the free ID?

6 MR. DAVIDSON: What was the example that
7 you gave, sir?

8 SEN. SHAPLEIGH: Birth certificate.

9 MR. DAVIDSON: Yes, that -- that can be
10 rather expensive. And, in fact, some of the -- some
11 of the studies that were done in the Indiana case
12 where the ID was -- the government issued ID was all
13 supposed to be free indicated that people often had to
14 spend a good deal of money and a good deal of time
15 getting birth certificates and/or material that
16 indicated that they were born in the United States.

17 SEN. SHAPLEIGH: In my district, I
18 believe the charge is \$22 for a birth certificate to
19 get one in order to go get the free ID. Would that,
20 in your opinion, be a barrier to folks trying to
21 achieve a constitutional right to vote?

22 MR. DAVIDSON: When the 24th Amendment
23 outlawed the poll tax in Texas in the middle 1960s,
24 the tax, as I recollect, was \$1.50, and in some
25 counties there was a 25 percent surcharge, so that

1 would bring it to \$1.75. And in today's dollars, that
2 would be somewhere around \$11. So the figure that you
3 have quoted is almost twice as high as the poll tax
4 laws in current buying power when it was abolished.

5 SEN. SHAPLEIGH: Thank you, sir. Thank
6 you for coming.

7 MR. DAVIDSON: Thank you.

8 SEN. DUNCAN: The Chair recognizes
9 Sen. Williams.

10 SEN. WILLIAMS: Thank you,
11 Mr. President.

12 Mr. -- Dr. Davidson. Correct? I want
13 to be sure. Is that --

14 MR. DAVIDSON: Yeah.

15 SEN. WILLIAMS: Do I have your name
16 right? Okay. Thank you.

17 A couple of questions. As I read your
18 written testimony, you say some things here that
19 really call up some unfortunate parts of our history
20 here in Texas with relation to racial issues and
21 voting. And I think the one that strikes me the most
22 is the poll tax. And you say that the poll tax is --
23 was one of the most disenfranchising mechanisms of
24 its day. Tell me how you think this bill, Senate
25 Bill 362, help me understand how you believe that this

1 imposes a poll tax on voters.

2 MR. DAVIDSON: Well, as I explained to
3 the other Senator just a minute ago, it is sometimes
4 expensive to get various forms of photo ID that are
5 required to vote.

6 SEN. WILLIAMS: Well, have you read our
7 Senate Bill 362? Have you reviewed the bill?

8 MR. DAVIDSON: Yes. I reviewed it
9 briefly, yes.

10 SEN. WILLIAMS: Well, did you read the
11 whole bill?

12 MR. DAVIDSON: Yes.

13 SEN. WILLIAMS: You did? And did you
14 note in the bill that you don't need a photo ID to
15 vote? You can also bring alternate forms --

16 MR. DAVIDSON: Yes.

17 SEN. WILLIAMS: -- of information, like
18 a utility bill and a government check or a social
19 security document, or it could be a Medicare
20 enrollment card, those kinds of things that might be
21 very common for people, especially the kinds of folks
22 that you're talking about, to have? And you still
23 think this imposes a poll tax even in light of the
24 alternate forms? All you talked about and all you
25 referenced in the paper here is the cost of a photo

1 ID. But isn't it true, in fact, that there are
2 alternate forms of identification that are available
3 that would be available to most people at no cost?

4 MR. DAVIDSON: In that case, if it's not
5 a photo ID that's shown at the polls, isn't one
6 required to cast a provisional ballot?

7 SEN. WILLIAMS: No.

8 MR. DAVIDSON: No?

9 SEN. WILLIAMS: No, if you bring two
10 alternate forms of identification -- and there's a
11 list in the bill. I'd be glad to read them to you if
12 you'd like for me to do that.

13 MR. DAVIDSON: Could you do that,
14 please?

15 SEN. WILLIAMS: Yes, yes, give me just a
16 second to get that in front of me. Okay. "the
17 following documentation is acceptable as proof of
18 identification under this chapter. Any two of these
19 items would be sufficient: A copy of a current
20 utility bill; a bank statement; a government check, a
21 paycheck or other government document that shows the
22 name and address of the voter; official mail addressed
23 to the voter -- addressed to the person by name from a
24 governmental entity; a certified copy of a birth
25 certificate or other document confirming birth that is

1 admissible in a court of law and establishes the
2 person's identity; United States citizenship papers;
3 an original or certified copy of a marriage license or
4 a divorce decree; court records of the person's
5 adoption, name change or sex change; an identification
6 card issued to the person by a governmental entity of
7 this state or the United States for the purpose of
8 obtaining public benefits, including veterans'
9 benefits, Medicaid or Medicare; a temporary driving
10 permit issued to the person by the Department of
11 Public Safety; a pilot's license; a library card that
12 contains the person's name issued to the person by a
13 public library located in this state; or a hunting and
14 fishing license issued by the Parks & Wildlife
15 Department."

16 Now, really, Dr. Davidson, do you think
17 it's so burdensome that if we're going to allow
18 someone to bring a copy of a government-issued
19 document of any type plus a library card or anything
20 issued by a government entity like that, I mean,
21 that's a pretty long list, is that really that
22 burdensome? All the things that you talked about, how
23 do you call this a poll tax if we're giving these
24 alternate forms of ID?

25 MR. DAVIDSON: I think for some people

1 it will be difficult to get those kinds of things.

2 SEN. WILLIAMS: But is it a poll tax?

3 That's my question.

4 MR. DAVIDSON: Well, it's not officially
5 a poll tax.

6 SEN. WILLIAMS: No, it wouldn't be a
7 poll tax.

8 MR. DAVIDSON: It would be a burden of
9 time or in some cases money, yes.

10 SEN. WILLIAMS: Yes. And didn't the
11 Supreme Court speak to that very point in their
12 opinion in the Crawford case? Are you familiar with
13 that?

14 MR. DAVIDSON: Yes.

15 (Simultaneous discussion)

16 SEN. WILLIAMS: Okay. And I believe
17 that what the Supreme Court said that burdens of that
18 sort arising from life's vagaries, however, are
19 neither so serious nor frequent to raise any question
20 about the constitutionality. The availability of the
21 right to cast a provisional ballot provides an
22 adequate remedy to the problems of that character.

23 So in addition to the long list of
24 alternative documents that we would allow under the
25 provisions of Senate Bill 362, we also have the

1 provisional ballot provisions that are referenced
2 here, and we don't require them to come back like the
3 other states do.

4 Now, I just fail to see -- I think it's
5 very inflammatory for you to come before this body and
6 talk about the legislature imposing a poll tax when
7 the bill doesn't provide for that at all, and, in
8 fact, recognizes that the very things that
9 Sen. Shapleigh has been talking about over here, the
10 burden of having to come up with some of these
11 documents might be too much, and we provided these
12 alternate forms. I just don't think that's fair at
13 all.

14 MR. DAVIDSON: Well, we disagree on
15 that, and four members of the Supreme Court apparently
16 disagreed, too, with regard to the issue --

17 SEN. WILLIAMS: Now --

18 MR. DAVIDSON: -- that it was not a poll
19 tax.

20 SEN. WILLIAMS: I believe that you
21 referenced also in your remarks earlier the Attorney
22 General and the record that he had in his failure to
23 find any voter fraud after expending a vast sum of
24 money, I believe you said \$1.9. I think it's actually
25 \$1.4 million that the Special Investigations Unit

1 spent. Did you speak of that earlier? Did I --

2 MR. DAVIDSON: I believe I did, yes.

3 \$1.4 million, yes.

4 SEN. WILLIAMS: Right. Okay. Maybe I
5 misunderstood you, but it was, in fact, \$1.4 million
6 that was erroneously reported in a newspaper that the
7 funds were spent on election fraud and enforcement.
8 In '03 the Office of the Attorney General launched a
9 Special Investigations Unit. Initially it was funded
10 by a Justice Department grant that's administered by
11 the Governor's Office. Contrary to the reports that
12 you seem to have bought into without any real digging
13 into the facts is that the SIU, the Special
14 Investigations Unit, it handles many types of cases,
15 not just election fraud.

16 Here are some of the cases that they
17 were involved in: The El Dorado YFZ Ranch, we had
18 three Special Investigation Unit investigators that
19 are currently assigned there full time to that case;
20 the Texas Youth Commission, including a case where a
21 TYC officer was indicted for drug possession, they
22 handled more than 840 abuse allegations; hurricane
23 related rapid response efforts, including serving
24 subpoenas on potential price gougers; market
25 manipulation and penny stock fraud case that was

1 jointly pursued with the Securities and Exchange
2 Commission; an ERCOT case; the Cyber Crimes Unit and
3 Fugitive Unit assistance for combined arrests of over
4 100 cyber predators and child pornographers and more
5 than 1,000 fugitives; identity theft; public
6 corruption, including a Bastrop County case and the
7 Potter County Sheriff's case; money laundering,
8 including investigations into the bulk transportation
9 of drug currency, money couriers and money services
10 businesses; and then finally election fraud.

11 Now, I don't think it's fair for you to
12 come before this body and characterize that
13 \$1.4 million as an investigation into election fraud
14 when, in fact, some of the most horrific things that
15 have happened in this state that the AG has had to get
16 involved in, that's what they've been spending that
17 money on.

18 MR. DAVIDSON: "Vote fraud has been an
19 epidemic in Texas for years, but it hasn't been
20 treated like one, Abbott said, in announcing the SIU.
21 It's time for that to change. He promised that his
22 newly created Special Investigations Unit would help
23 the Police Departments, Sheriff's Offices and District
24 and County Attorneys successfully identify,
25 investigate and prosecute various types of voter fraud

1 offenses. Established with a \$1.4 million grant from
2 the Governor's Office, the SIU would have as one of
3 its prime responsibilities investigating voter fraud
4 allegations, he said. Abbott targeted 44 counties
5 containing 78 percent of registered voters in the
6 state. According to the Austin American Statesman,
7 complaints originate from voting officials, District
8 Attorneys or citizens and are sent to the Secretary of
9 State or the Attorney General. Each complaint is
10 evaluated by a professional employee to determine
11 whether the complaint is legitimate and warrants
12 further investigation."

13 Now, that sounds to me like the Attorney
14 General was certainly representing this as a major
15 effort to uncover voter fraud.

16 SEN. WILLIAMS: So whatever you read in
17 the paper, that's what you pretty much take at its
18 face value?

19 MR. DAVIDSON: Most of what I quoted,
20 Senator, is taken from the Attorney General's Website
21 when he was announcing this voter fraud initiative.

22 SEN. WILLIAMS: Dr. Davidson, for the
23 record, to date the Office of the Attorney General has
24 resolved 22 election fraud prosecutions at a cost of
25 approximately \$600,000. There are an additional eight

1 election fraud indictments that are pending currently.
2 There has been approximately \$100,000 spent on those
3 eight cases. And of the 700,000 -- of \$700,000 spent
4 on election code investigations, about \$93,000 of that
5 came from Department of Justice grants. DOJ grants
6 aren't used to fund these Special Investigations Units
7 any longer, and it's now funded with general revenue
8 from the state.

9 So I just felt like when you come before
10 this body and you make allegations about a poll tax
11 being levied on voters and you haven't even read the
12 bill to know what the alternative voting provisions
13 are, and you then come and accuse our Attorney General
14 of doing something with that Special Investigations
15 Unit without even really looking into what the unit
16 had really cost, I just felt like the record needed to
17 be set straight.

18 Thank you very much. I appreciate you
19 being here so late at night.

20 MR. DAVIDSON: Thank you, sir.

21 SEN. CARONA: Sen. Van de Putte, for
22 what purpose?

23 SEN. VAN de PUTTE: I would like to
24 hold, Mr. President, until -- Sen. Shapleigh, I think,
25 would like to continue on this, and then I have a